PARLIAMENTARY DEBATES

(Part II—Proceedings other than Questions and Answers)

OFFICIAL REPORT

VOLUME II, 1950

(24th February, 1950 to 14th March, 1950)

First Session

of the

PARLIAMENT OF INDIA

1950

CORRIGENDA

to

the Parliamentary Debates (Part II—Other than Questions and Answers), Ist Session, 1950,—

In Volume II,—

1. No. 1, dated the 24th February, 1950,—
   (i) Page 809, line 19 *for* "cbroadly" *read* "broadly".
   (ii) Page 814, line 20 *for* "alsod" *read* "also a".
   (iii) Page 826, line 24 *after* "have" *read* "got".
   (iv) Page 831, line 12 *for* "stile" *read* "still" and in line 13 *for* "wonld" *read* "would".
   (v) पृष्ठ ८५४, पंक्ति ६ में "वैठेगो" के स्थान पर 'बैठेंगे" पढ़ें ।
   (vi) पृष्ठ ८५७, पंक्ति ४ में "डब्बों" से पहले "और" को निकाल दें ।
   (vii) Page 865, last line *for* "15th" *read* "25th".

2. No. 2, dated the 25th February, 1950,—
   (i) Page 884, line 27 from bottom *for* "latterly" *read* "laterly".
   (ii) Page 898, line 11 *for* "fact" *read* "feet".
   (iii) Page 901, line 11 *omit* "a" *after* "had".
   (iv) Page 903, line 10 from bottom *for* "low" *read* "law".

3. No. 3, dated the 27th February, 1950,—
   (i) Page 950 , line 5 from bottom *for* "alternation" *read* "alteration".
   (ii) पृष्ठ ९६१, नीचे से पंक्ति १३ में "श्री ए० पी० सिंह" के स्थान पर "श्री ए० पी० सिन्हा" पढ़ें ।
   (iii) पृष्ठ ९६६, पंक्ति १ में "मा" के स्थान पर "था" पढ़ें ।
   (iv) Page 967, line 9 *for* "ot" *read* "to".
   (v) Page 970, line 9 *for* "Mangers" *read* "Managers".

4. No. 4, dated the 28th February, 1950,—
   (i) Page 984, line 11 *for* "Mr. Chairman :— The question is" *read* "The motion was adopted".
   (ii) Page 986, for the existing last line *read* "*The House then adjourned for lunch till half past two of the clock*".
   (iii) Page 994, line 27 from bottom *for* "onse" *read* "ones".
   (iv) Page 1010, line 16 from bottom *for* "Mr. Gaganvinari lal" *read* "Mr. Gaganvihari Lal".

5. No. 5, dated the 1st March, 1950,—
   (i) Page 1021, line 22 *for* "has been callous" *read* "has been even callous".
   (ii) Page 1033, line 25 from bottom *for* "on" *read* "or".
   (iii) Page 1053, line 21 *for* "Shri Ethirajula Naidu" *read* "Shri Ethirajulu Naidu".
   (iv) Page 1054, *transfer* lines 29 and 30 *after* line 31.
   (v) Page 1064, line 4 *for* "cadamom" *read* "cardamom".

6. No. 6, dated the 2nd March, 1950,—
   (i) Page 1090, line 17 *for* "Hon. Members three minutes" *read* "Hon. Members say three minutes".
   (ii) Page 1096, first line *for* "section" *read* "selection".

7. No. 7, dated the 6th March, 1950,—
   (i) Page 1143, line 11 from bottom *for* "fact" *read* "face",
   (ii) Page 1150, line 18 *for* "in" *read* "the".

(iii) Page 1060, line 13 from bottom *delete* "no".

(iv) Page 1164, line 4 from bottom *for* "Shri Satis Chandra" *read* "Shri Satish Chandra".

(v) Page 1165, line 26 *for* "Dr." *Matthai* *read* "Dr. Mathai".

(vi) Page 1171, line 2 *for* "as" *read* "or".

(vii) Page 1174, last line *for* "Hudget" *read* "Budget".

8. No. 8, dated the 7th March, 1950,—

(i) Page 1179, line 11 *for* "question" *read* "questions".

(ii) Page 1221, line 13 *for* "by" *read* "but".

9 No. 9, dated the 8th March, 1950,—

Page 1260, line 21 from bottom *after* "so far," *read* "but no".

10. No. 10, dated the 9th March, 1950,—

(i) Page 1306, line 28 from bottom *for* "gah" *read* "Durgah".

(ii) Page 1321, line 28 *for* "has " *read* "This".

11. No. 11, dated the 10th March, 1950,—

(i) Page 1342, line 23 from bottom *for* "panel" *read* "penal".

(ii) Page 1352, line 3 from bottom *for* "Houses" *read* "House".

12 No. 12, dated the 11th March, 1950,—

Page 1385, *for* the existing line 18 from bottom *read* "another thing that I wish to submit is this. It is but fair that, when the".

13. No. 14, dated the 14th March, 1950,—

Page 1507, line 11 from bottom *for* "Shri A. P. Fain" *read* "Shri A. P. Jain".

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PARLIAMENTARY DEBATES

(PART II—PROCEEDINGS OTHER THAN QUESTIONS AND ANSWERS)

Saturday, 25th February, 1950

The House met at a Quarter to Eleven of the Clock.

[MR. SPEAKER *in the Chair*]

QUESTIONS AND ANSWERS

(*No questions: Part I not published*)

BUSINESS OF THE HOUSE

SUSPENSION OF QUESTION HOUR

Mr. Speaker: A request has been made to me that, in view of certain emergent legislation which the Government wish to put through today, the reasons for which will be duly explained by the hon. the Home Minister, the Questions that are fixed for today be postponed to some other suitable date. It is therefore my idea that, as we may have to sit on Saturdays in view of the pressure of business, these Questions may be put off to some Saturday when the House is in session, so that hon. Members will not lose the benefit of putting their questions orally. May I have the view of the House on this?

Shri Syamnandan Sahaya (Bihar): If the Government business is so urgent I do not see, Sir, why permission should not be given by the House. If it is an emergent legislation . .

Mr. Speaker: That is why I am proceeding to ask the House.

Hon. Members: We all agree.

Shri Kamath (Madhya Pradesh): Do I take it, Sir, that firstly the Questions are not eliminated but only postponed and secondly they are postponed to a Saturday and not to any other day when Questions have already been fixed?

Mr. Speaker: I think I have already specifically said so and it does not require any clarification. The questions will be postponed to some Saturday, not necessarily the next because, I do not know whether we sit on the next Saturday or the Saturday after next. But there is a possibility of our sitting on Saturdays to finish the business.

So the Question Hour is suspended.

THE RAILWAY BUDGET—GENERAL DISCUSSION.—*contd.*

FIRST STAGE—*Concld.*

The Minister of Transport and Railways (Shri Gopalaswami): I rise to reply to the General Debate on the Railway Budget which took, as the House will

[Shri Gopalaswami]

remember, two days. I should like at the beginning to convey my acknowledgments to hon. Members in the House for the very friendly reception they have given to my Budget. It has been particularly gratifying not so much because, of the monotony, almost, of compliments that were paid to me but because I feel that the House did appreciate what was said in my speech and, I think, appreciated also the fact that we had made some progress in putting the Railways on a sound financial and administrative footing. The compliments that were paid so far as the Budget was concerned, as I said, were almost a chorus and I began to think, as I heard speaker after speaker starting with congratulations to me, whether after all there was not something wrong with the way in which I had presented the Budget to the House. I say this because observers occupying a physically elevated position, perched in the press gallery, did sound in some cases a different note. One of them whose spicy columns in a Delhi newspaper we often have to read, did say that the speech "was a dull performance" and later on he proceeded to say that hon. Members were not very interested when that performance was being enacted, at any rate during the first stages. Well, that latter observation does not tally with my understanding of hon. Members' reactions to what I have said in my speech. I rather thought that of the thirty-five or thirty-six hon. Members who took part in this debate, many were new Members, several of them were young Members of the House, and the amount of study and attention they had given to the problems raised in the Budget speech was a matter on which I think the House deserves to be congratulated. There was one observation made in this particular press description of the debate and that was that when I came to acknowledge my indebtedness to hon. Members of the House who had served on the Standing Finance Committee and the Central Advisory Council, certain hon. Members did not quite like it because, in the writer's opinion, it was a kind of patronising observation on my part. I cannot plead guilty to any attempt at patronising any Member of this House. On the other hand I thought that if, there was any patronising, it was in the remark which immediately followed this observation in that particular column, namely, that the speech was "one of the best Budget speeches" that had ever been delivered in the House. I thought that was patronising me to an extent which perhaps I did not deserve.

Coming to the Budget itself and the criticisms that have been levelled against it, I wish only to say that those criticisms were not merely friendly but they were, if I may say so, of a constructive character. And I say this notwithstanding the fact that one or two hon. Members did sound a jarring note. I leave aside the observation made by one Member that he was not prepared to join the "mutual admiration society" in this House. I rather thought that in his subsequent observations, though he did not join in terms, he certainly did join in the substance of the observations that had been made already. The other jarring note was from an hon. Member who is quite new to this House and in his opinion the problem of regrouping and re-organisation of Railways had been unduly delayed and that in the 2½ years that have elapsed after the transfer of power this could have been achieved perhaps twice over. One disappointment that I felt in listening to this debate is that not one woman Member paid me the compliment of speaking in the debate.

Shri Sondhi (Punjab): You have got the discrimination in the Railways also!

Shri Gopalaswami: I hope that did not mean that they did not approve of what I had said. But I refer to this for this reason: if one woman Member had stood up after the particular Member to whose observation I have just referred, that is about regrouping and re-organisation, and that woman Member

had been my hon. friend Shrimati Dakshayani Velayudhan, I am sure that she would have corrected the particular Member who made that observation and made him realise what practical difficulties there are in bringing about a regrouping and re-organisation of the Railways—33,000 odd miles, within the space of two years.

At this point, I should like to refer to one basic criticism that was made by an hon. friend from Assam. He questioned the constitutionality of presenting a separate Railway Budget. He thought that while under the 1935 Act there was provision for presenting a separate Railway Budget, there is no such provision in the new Constitution. May I remind him that the provision that he refers to in the 1935 Act has to be inferred from the sections in that Act which relate to the constitution of a Federal Railway Authority? But that Chapter, as hon. Members are aware, was never brought into use and when the Act came to be adapted at the time of the transfer of power that Chapter was omitted altogether. We have been presenting separate Railway Budgets not only under the 1935 Act but also under the previous 1919 Act, and I may say that this separate presentation derives its authority not so much from the provisions of the Act as from the Rules of Business guiding the procedure in the House. These Rules of Business, as hon. Members know, provide for presentation of the Budget of India in parts. They also provide that in the case of the Railway Budget the Railway Minister will be treated on the same footing as the Finance Minister in regard to the General Budget. It is under those provisions that the procedure and practice have been in vogue. Under the new Constitution, Railway Revenues also form part of the Consolidated Fund. The Budget for the Consolidated Fund is now being presented in two parts, one for Railways and the other for all other subjects. There is nothing in the Constitution which conflicts with this procedure. I may assure my hon. friend that it is perfectly in accordance with the new Constitution.

There are certain general matters of policy which were raised in the course of the debate. I am trying to confine my remarks to certain broad issues because I want to save time for the purpose of dealing with the important emergent legislation which has to be put through today, and if hon. Members feel that I have omitted to deal with any points that they have raised, I give them the assurance that as practically all the points which they have raised will come up in one form or another during the debate on the Demands for Grants, all that I have to say on every one of them will be said in the course of that debate.

11 A. M.

Taking simply the questions of general policy, I would first refer to an observation made by my hon. friend, Mr. Ramalingam Chettiar. That was that we must reorient policy as regards construction of railways, that it should be based not so much upon the financial return that could be expected from a project but that it should be based on the recognition of the fact that railways play a very important part in the general economic improvement of the country, and that it is on that basis that we should plan out both improvement and expansion. I am entirely at one with him, and I believe in more than one place in the course of my Budget speech I have made reference to this reorientation of policy. He will remember that the conclusions arrived at by the Railway Convention Committee last December were based on a recognition of this fact. We have made provision for implementing such a policy in the Budget for the coming year so that there is no difference of view at all between hon. Members and me on this particular question. I may incidentally say that several other Members had also referred to the same point.

Then, my hon. friend, Mr. Ajit Prasad Jain referred to the fact to which I had made reference in the speech, namely that the separation is not yet

[Shri Gopalaswami]

complete, that the Ways and Means part of the Budget is still mixed up with the Ways and Means part of General Finances, and according to him it is necessary that the separation should be completed. Well, I have given reasons in my Budget speech as to why it is not advisable or desirable to attempt such a separation now or for several years to come. It is unnecessary for me to repeat what I have said in my Budget speech, but let me remind hon. Members of the fact that if in a particularly unfavourable year for General Finances, as the present one is, Railways do give support to General Finances, it is not altogether impossible that in some years in the future we may have to rely on the General Finances also. And while we allow them to make use of the reserves we keep with them, they pay us a fairly satisfactory, if I may say so, rate of interest which is about 3·2 per cent—not bad for allowing balances to remain with a banker. I think we have to realise the fact that the Railways are after all part of the general economy of the country, that unless we support General Finance whenever we can the results might be that the repercussions on General Finance may react upon Railway Finance as well and the two would jointly suffer in such a contingency.

There were other things that were mentioned as regards the Betterment Fund, which is now to be re-named Railway Development Fund with the added responsibilities of providing for labour welfare and for the construction of unremunerative projects. Some hon. Members seemed to be of the opinion that it would be best to have a separate Betterment Fund in order that passenger amenities might be attended to with sufficient finance and zeal.

Now, we have made provision for that. We have said that from the Railway Development Fund of the future, Rs. three crores per annum shall be earmarked for passenger amenities. Whether we spend any other portion of the Fund on other objects or not, passenger amenities will get Rs. three crores under all circumstances for the next five years. My own feeling is that that provision is fairly adequate. I am quite alive to the fact that even if we spend Rs. 15 crores during the next five years on passenger amenities, we shall probably not have overtaken all that has to be done in that connection, but I have to decide on what amount to provide for with due regard to the prospect of the money being spent usefully. Past experience, as hon. Members are aware, shows that in the first year only Rs. 13 lakhs could be spent on passenger amenities; in the second year we spent, I believe, about Rs. 80 lakhs; and this year we are spending up to Rs. 1·75 crores and from next year, we propose to spend Rs. three crores per annum for five years. I think that is as good a provision as we can make.

A good deal was said about the integration of Railways, re-grouping and all the rest of it. If I am right, I gathered the impression that the House is generally in favour of re-grouping all the different railway units, the idea being to reduce their number and to provide sizable units in which administration could be efficiently organised and worked. If that is so, it is really what we are attempting to do. I have told the House that a plan is in the making and when that plan is completed, we propose to take all interests likely to be affected into consultation before we reach a final decision. I am fully alive to the fact that the matter is one of very great importance.

Suggestions have been made that the re-grouping should follow linguistic considerations. I am afraid that that is a thing which I cannot, myself, give my approval to. Railways, naturally, have to cut across linguistic barriers, and after all they are a Central subject. There is no reason why we should cut Railways up into the numerous linguistic divisions that one can think of in this country. That is apart from the fact that I am not personally one of those who are very much enamoured of linguistic territorial units.

Something was said about the loan we have taken from the International Bank for Reconstruction and Development. It was suggested that the rate of interest is high. It was said that the capital that is lent to us is American capital; it is the Americans that appropriate all the interest that we have to pay; that the amount that has been provided in the Agreement for servicing this loan is unduly excessive, and so on. In this connection, I wish to say only this. It is not that we were very anxious to borrow from this Bank. Circumstances connected with foreign exchange compelled us to obtain this loan, and so far as the terms are concerned, the matter has been explained by the President of the Bank, and the House will perhaps be interested to know that the Leader of the Indian Delegation to UNESCO has taken this matter up, and, in a speech of his which I read in the papers the other day, he has tried to make the point that the conditions were rather onerous, particularly for a country like India, which is such an important member of the Bank itself. As to what is going to happen, I do not know. But the fact remains that this Bank feels that it can borrow money in the market only at a certain rate. It has got to charge, I believe ¼ per cent. for administrative and other expenditure and is required by its Charter, I believe, to add one per cent. to the rate at which it borrows. That takes us to four per cent. It is true that some loans which they have advanced bear a lower rate of interest. I believe, the loans for agricultural improvements bear a rate of 3½ per cent. They are all however short-term loans for seven years and so fourth. But this is a longer term loan, and I do not think we can jib at it, because we had no other means, at the time we borrowed, of paying our dues in America.

Shri Hanumanthaiya (Mysore): My main point is this: Having obtained this loan of 34 million dollars, why should we not be free to spend that money in any way we like? Why should we not purchase engines either from England or other soft currency countries? Why should we be pinned down to purchasing them in dollar countries only like U.S.A. and Canada?

Shri Gopalaswami: As a matter of fact, the order for locomotives had been placed in the U.S.A. and Canada. We had to pay in dollars. If we could have placed the order in sterling area, perhaps we may have avoided going to this Bank for a loan at all.

The Minister of Finance (Dr. Matthai): Mention deliveries.

Shri Gopalaswami: Yes, deliveries.

I quite sympathise with the feeling that, for us to borrow at 4 per cent. when we are paying only 3¼ per cent. on the Rs. 800 crores of the capital at charge, seems somewhat incongruous, but in the circumstances I have mentioned, when we had to make these payments and we could not find the goods to export for that purpose, we had to accept the terms as they were provided in the Charter of the Bank.

Shri Ramalingam Chettiar (Madras): Is it possible to divert any of the orders for locomotives to sterling area countries now?

Shri Gopalaswami: It is not to our interest to do so, because we get the goods at the proper time from both the U.S.A. and Canada. It is because the sterling area countries were unable to make deliveries within reasonable time that we had to go to America and Canada.

One other matter which, I think, the hon. Members would like me to deal with is the question of the relations between railway labour and railway management. I have said, and I stick to what I have said, that the relations have commenced to be cordial and co-operative. There were, of course, occasions on which these all-India bodies had met and expressed their grievances as to particular actions taken by the Railway Board; they

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passed resolutions. And it is not a matter for surprise that when a labour federation does pass a resolution, it always attaches a sanction to it, namely, that if it is not accepted something dire will happen. I am perfectly sure however that the Federation or for that matter the other all-India organisation concerned will never venture on a strike, except for the most compelling reasons and I say this with reference to both organisations.

There was a note of disappointment which was expressed by my hon. friend Mr. Harihar Nath Shastri that in the reference to the averting of last year's strike, I gave all the praise to one particular organisation and left his organisation out of the picture. I think he is not doing justice to me. If he will re ead the sentence in my speech, he will find that due acknowledgment has been paid to the assistance and support given by unions and individuals who did not belong to the all-India Railwaymen's Federation and, if I made mention of the All-India Railwaymen's Federation, that was due to the consideration that I had to state facts as I know them. There is no doubt that the main fact which influenced the averting of the strike was the resolution which the All-India Railwaymen's Federation did adopt. It adopted not only a resolution to put off or to suspend the strike indefinitely, but it also took disciplinary action against people who would not listen to its advice. We on the law and order side took very drastic action against prospective saboteurs and people of that sort. We also got very valuable assistance from the unions and organisations to which Mr. Harihar Nath Shastri belongs; that is also mentioned in my speech. It was as a result of all this that, when we came to constitute a Joint Advisory Committee, I persuaded the leaders of the All-India Railwaymen's Federation to agree to the inclusion of a representative from outside in the work of that Committee. That Committee has done good work. It certainly is slow, perhaps, but the work of a new organisation like that consisting of representatives of institutions which have been so long opposed to each other in their views has necessarily to be slow.

Some complaint has been made of the fact that we have not accepted the recommendations of this Committee *in toto*. I plead guilty to that. But the bias of the Railway Ministry in dealing with recommendations from this Committee has always been in favour of accepting their recommendations. It is possible that, in two or three cases, we could not accept their recommendations. Even there, we provided a substitute which certainly gave the substance of what they really wanted. If the House is interested, I would mention that the number of recommendations received up to date from the Committee, that is to say, till about the 22nd of this month was 29. Three more have been received since. The number of recommendations accepted is 18 out of which 15 have been adopted without any alteration. The number of recommendations rejected is two and the number of recommendations under consideration is nine *plus* three which we have now received. I wish only to draw the attention of the House to this fact. I should certainly like this Committee to go forward with its work at a much quicker pace than it does. But there are difficulties. While, for instance, perhaps, the Railway Board's representatives might be obsessed by previously expressed official views on certain matters, representatives of labour also do not seem to me to be free from bias in the decisions they come to at the discussions of the Committee. They are also obsessed by resolutions previously passed by their unions or federations. It becomes very difficult to find a way out of this impasse. The Chairman had to intervene several times in order to give a decision on conflicting views very intensely held on either side, and, in judging whether recommendations should be accepted, naturally the Railway Ministry has to take account of their possible repercussions on the incumbents of other

services under the Central Government as also of the cost and the manner in which they will affect previous decisions on similar matters during the last two years.

A good deal has been said about the restoration of dismantled lines, new constructions of railways and development and so on. I am at one with the views that have been expressed that our railway map should be more crowded with railway lines than it is at present. There is large scope for expansion—in order to carry railway facilities to distant parts of the country. But we have also to take note of the fact that new construction has to be financed out of capital funds and it is only when capital could be raised at an economic rate and with ease that we can embark upon large programmes of this nature. Even though about 130 crores of railway reserves are now in the balances of the Central Government, they are all reserves which could not be used for capital construction except in the case of the new Development Fund in whose case we have decided to spend some of that money on unremunerative lines.

Pandit Maitra (West Bengal): Does it also include the strategic lines that are necessary on border areas of certain States?

Shri Gopalaswami: One of the recommendations of the Convention Committee is that strategic lines should be financed from General Revenues and while railways could construct them and work them they will not pay a dividend on the capital invested in them. Well that is so far as new constructions are concerned.

I am alive to the large amount of discontent that exists in the House and in the country as regards non-restoration of lines which were dismantled during the war and have not been restored. Hon. Members who have watched the proceedings of the Central Board of Transport would have realised that everyone of these lines has come under investigation and examination and the result of that examination has been in the past that many of them have been turned down on the consideration that it will not be economic to restore them.

Recently we have started on a policy of not laying too much stress on the economic return which you must get whether from a restored or dismantled line or from a new construction and I think all the decisions we have taken about not restoring certain dismantled lines will have to be reviewed in the light of this new policy. I propose to have this undertaken as early as possible.

There were one or two small things which were mentioned. One matter to which the hon. Mr. Tirumala Rao referred was the diversion of the main line from Madras to Calcutta *via* Cocanada. I fully sympathise with him. I know Cocanada very well and I myself have never appreciated why the original line was taken through Samalkot and Cocanada was avoided. Now the point for consideration is what shall we do with regard to taking this line *via* Cocanada? Some survey has got to be made and it was decided that that survey might be made after one year. Meanwhile my hon. colleague, the Minister of State, went to Cocanada and heard representations from the people affected and he asked the Railway officers who were present to examine the feasibility of running the through trains from Samalkot to Cocanada and back and resuming their journey to Calcutta or Madras as the case may be. On that suggestion of his, recommendations have been received and they are under consideration. We shall take a decision about it in the course of the next day or two.

With regard to the other matter, I will assure Mr. Tirumala Rao that I shall try and see whether it would not be possible to start in 1950-51 itself

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the survey of the line from Pithapuram to Cocanada. The mere survey is not likely to cost very much and we shall try to put that survey through as early as possible.

There was one point which I think I must refer to because it came from an hon. Member who was not willing to join the mutual admiration society. His complaint was that money was being wasted in purchasing stores *e.g.*, rails have been purchased from Canada at Rs. 391-12-0 per ton while Tatas prices were lower and it is also understood, according to him, that the rails are not upto specification. Let me assure him that no orders were placed outside the country until it had been found that Tatas or any other firm in the country could not supply. It is only for the quantity that could not be obtained in the country that orders were placed in Canada. With regard to the other allegation about prices being too high and the material supplied being not upto the mark, I would only inform the House that of the 155,000 tons of rails imported during 1948-49 and 1949-50, 130,000 tons are from Canada and 25,000 tons from the U.S.A. The price of Canadian rails is 75·5 dollars per ton which works out to approximately Rs. 241 against Tatas' price of Rs. 287-8-0 per ton. Including freight however the price of Canadian rail is Rs. 303 per ton and with the addition of import duty it comes to Rs. 365 per ton. The price of U.S.A. rail is 80·3 dollars per ton which is equal to Rs. 268 per ton and including freight it comes to Rs. 333 per ton and including duty it comes to Rs. 417 per ton. The rails have been supplied according to the standard specification laid down by the American Society for testing material and are of the same standard as those used in American railways.

I think I have taken about 45 minutes and I do not want to stand any longer in the way of the hon. the Home Minister introducing his Bill and putting it through the House today. There are a number of individual points raised by hon. Members to which I have, I hope, satisfactory answers but as most of them, if not all of them, will come up for discussion during the debate on the Demands for Grants, it is unnecessary for me to say anything now. I shall reserve what I have to say to the three days that will be allotted for that purpose.

Shri S. C. Samanta (West Bengal): May I know from the hon. Minister for Railways as to what is the reaction of the Government about the proposal put forward by my friend Shri Sinha about the lands lying idle by the side of the Railway lines for growing more food and money crops?

Mr. Speaker: No supplementary question or reply.

PREVENTIVE DETENTION BILL

The Minister of Home Affairs and the States (Sardar Patel): I introduce the Bill to provide for preventive detention in certain cases and matters connected therewith. And also crave permission to move:

"That the Bill to provide for preventive detention in certain cases and matters connected therewith, be taken into consideration."

At the outset I should like to apologise to the House for the extremely short notice at which I have to approach it for this emergency legislation. The legislative output of the Ministry to which I have the honour to belong has not been large. That, I hope, would be regarded as sufficient proof of my intention not to trouble the House, or to trouble the House only when no other course is available to me. In this particular instance also I plead the same urgent necessity. The hon. Members are aware that the old Constitution in certain respects died

on the 26th January midnight when the new Constitution was born and the order of the President in this respect was signed at Ten O'Clock on the next day. So there was an interregnum which the lawyers cannot excuse and therefore to cover up this lacuna, it has become a necessity. Besides, certain judicial pronouncements or decisions which have been made during the last couple of weeks, and certain litigation which is pending before the Courts have created a situation in which, I feel, having regard to the conditions prevailing today, that unless this House takes immediate action, a grave peril to the security of the State is involved. That, therefore, is my justification for approaching this House with this piece of legislation and I thank you all and I thank you, Sir, for having accommodated me in this regard.

The House or at least a majority of the Members of this House who were Members of the Constituent Assembly are aware of the prolonged discussions which we had on Article 22 of the Constitution in the final form which that Article took. I can say straightaway that unfortunately owing to my ill-health I could not be present when the discussions were going on. But I was very apprehensive that certain aspects regarding the security of the State were not properly emphasised before the House at that time and, with all respect to that august body, I felt that due weight was not given to those considerations. But, I thought that the House also has provided for another alternative which, if resorted to, would meet with the requirements of the case and that under Article 373 the President's help would give a breathing period. Fresh legislation would, in any case, have been necessary because of the limitations placed by Article 22 on the powers of the States to keep a person under detention.

Recently the judgment of the Patna High Court declaring the Local Public Safety Act as *ultra vires* of the Constitution on account of its having certain provisions inconsistent with the Constitution has created difficulties in that State. The Calcutta High Court is already cognisant of applications made by 350 detenus who, I am assured, are some of the most dangerous. That is coming up on Monday for final decision. The Bombay High Court has also released some of the detenus the other day because they found that it was contrary to the provisions of the Constitution to keep them under detention any longer. The High Court of Allahabad has also issued an order declaring certain provisions of the Public Safety Act to be inconsistent with the provisions of the Constitution. These judicial pronouncements have therefore created a situation in more than one State in which it would no longer be possible for us to keep under detention persons about whose dangerous and subversive activities the State Government have no doubt.

Here, I should like to remind the House that the State Governments at our instance have already introduced in their Public Safety Ordinances or legislation, machinery of the type of Advisory Board referred to in Article 22 of the Constitution which scrutinises the cases of detention and makes suitable recommendations. In a large majority of cases of those who are at present under detention the Government has had the concurrence of these advisory bodies. It is only in a comparatively small number of cases that these Governments have had to invoke the primary responsibility which they have, of maintaining law and order and to keep the persons under detention even if the Advisory Boards felt otherwise. The House, therefore, can rest assured that a large majority of the cases with which it is dealing at present had the scrutiny of a non-executive authority.

I shall not weary the House by telling it how exactly the communists in India, who have been by far the largest number of detenus, constitute a danger to the existence and security of the State which has been brought into being by the sacrifices and sufferings of millions of our people. It would be a poor return for those sacrifices and sufferings if we fail to preserve the liberties

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which we have won after so much struggle and surrender them to the merciless and ruthless tactics of a comparatively small number of persons whose inspiration, methods and culture are all of a foreign stamp and who are as the history of so many countries shows linked financially, strategically structurally and tactically with foreign organisations. If anybody wishes to seek justification for our policy against them in cold print, he can do so in the pages of the pamphlet which we issued last year illustrating the methods and instances of communist violence. I should like to say here that our fight is not with communism or with those who believe in the theory of communism, but with those whose avowed object is to create disruption, dislocation, and tamper with communications, to suborn loyalty and make it impossible for normal Government based on law to function. Obviously, we cannot deal with these people in terms of ordinary law. Obedience to law should be the fundamental duty of a citizen. When the law is flouted and offences are committed, ordinarily the e is the criminal law which is put into force. But, where the very basis of law is sought to be undermined and attempts are made to create a state of affairs in which, to borrow the words of the distinguished patriot, the father of our Prime Minister, 'men would not be men and law would not be law', we feel justified in invoking emergent and extraordinary laws.

There are also other anti-social elements raising their heads and troubles of very serious dismensions are well above the horizon. I know hon. Members are already concerned about some of the recent developments. I am sure the House would like us to be fully armed and equipped with the means of dealing with any emergency that might arise. There is, therefore, a full justification for the enactment of a special measure to deal with persons of the type we propose to cover by this Bill.

I shall now deal with the structure of the Bill. Under Article 22 of the Constitution there are two sets of provisions relating to preventive detention. One set of provisions authorises the detention of any person for a longer period than three months if an Advisory Board has certified that there is in its opinion sufficient cause for such detention. The other set of provisions authorises Parliament to make a law under which a person may be detained for a longer period than three months without obtaining the opinion of the Advisory Board and which also lays down the maximum period for which any person may in any class of cases be detained. As the provisions of the Bill will indicate, we p opose to cover both these types of cases in this Bill. We have prescribed that for certain categories of detenus, namely, those detained in connection with the maintenance of supplies and services essential to the community, or who are foreigners, or who are detained by the District Magistrate or Sub-divisional Magistrate or in a Presidency town, the Commissioner of Police, the Advisory Board would be the final authority to determine the question of the continued detention. In regard to the other categories of cases, that is, those who are concerned with the defence of India, relations of India with foreign powers or the security of the State or the maintenance of public order, it will not be necessary to obtain the opinion of the Advisory Board. Nevertheless, we feel that some sort of a non-executive authority should be associated with the Government in a purely advisory capacity even in regard to these cases. We have therefore provided that after a period of six months of the original detention, the Government concerned shall review its decision in consultation with a judicial authority. We have thus maintained not only the provisions of the Constitution, but also its spirit. What is more, we have gone a step further than the provisions of the Constitution in that even where it has armed the Parliament with powers to provide for detention without obtaining the opinion of an Advisory Board, we have sought to replace the Advisory Board

by a judicial authority whose opinion, though not as binding as that of the Advisory Board, will, still be entitled to weight and consideration. As proof of the *bona fides* of the State Governments, I have only to repeat the statement which I have made earlier, *viz.*, that even at present, in a majority of cases that opinion has been given weight, in that, only small number of detenus are there without the concurrence of such bodies.

The other provisions of the Bill are merely incidental and embody the procedural matters either in the existing Public Safety Legislation in the States or in the Constitution itself. We have provided, for instance, for communication to detenus the grounds on which the order has been made and affording them the earliest opportunity of making a representation against the order. We have also sought to preserve the secrecy of the information on which the detention order is based, without in any way prejudicing an accused from seeking his own protection under the law. Also in order to give this or the successor Parliament an opportunity to review matters after some time, we have limited the life of the Bill upto 31st March 1951.

I hope I have now given sufficient justification of the urgency and necessity of this measure and have also shown conclusively how in framing its provisions we have safeguarded the liberty of the individual against the arbitrary acts of the executive. I shall now only plead with the House that during the consideration of this measure it fully takes into account the dangers which happily we have so far avoided, the dangers which unhappily still theaten us and the explosive possibilities of the situation with which we are faced at present. When we think of civil liberties of the extremely small number of persons concerned, let the House also think of the liberties of the millions of people threatened by the activities of individuals whose civil liberties we have curtailed. I am using the words "civil liberties" in connection with these individuals with some reluctance, because, for them liberty is synonymous with licence and there is hardly any difference between civil and criminal.

With these words, Sir, I shall leave this legislation in the safe hands of this House and earnestly ask for their co-operation and support in pushing th ough this legislation as speedily and expeditiously as possible.

Mr. Speaker: Motion moved:

"That the Bill to provide for preventive detention in certain cases and matters connected therewith, be taken into consideration."

Shri Kamath (Madhya Pradesh): This Saturday the 25th of February has seen many vicissitudes of fortune. This day was first allotted for the postponed private member's Bills, later for official business, and today we find that the Question-Hour also has been put off and certain emergency legislation brought before the House. So, in more ways than one, this day will be regarded by many of us as, though not a red-letter day, but, a very important day in the history of the Republic.

Sir, coming as it does just one month after the inauguration of the Republic, we the Members of this sovereign Parliament ought, in my humble judgment, to consider legislation of this nature from all aspects and all angles that it is possible for us so to do. It is regretable that the President of the Republic was not fully or correctly advised as to the Ordinance or Order that he passed soon after he was elected President. That is the *raison d'etre* of this legislation; because the lawyers have found some sort of flaw in that Order, this measure has been necessitated today.

Whenever we enact any legislation, it is not enough that we consider it subjectively; we must also look at it objectively, and the psychological effect of a legislation should not be lost sight of. It is not enough that we legislate;

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it is not enough either that we legislate rightly according to ourselves but it is very essential that so far as law-making is concerned, the country and the people should feel that the right thing has been done at the right time and in the right way. It is only in that manner that we can appeal to the people and tell them that such and such a thing is necessary. Otherwise it will be difficult for us to carry the nation with us. It will be difficult for us to carry the nation with us if we legislate in a hurry or if we hustle legislation or if we convey even a suggestion that we are legislating in what might be called indecent haste. Therefore, I for one would be happy if the Bill that has been brought forward today by the hon. the Home Minister is subjected to a full-dress debate if need be by sitting late into the night so that all doubtful points be clarified by Government. Without that, I am sure we will create a very unfortunate impression upon the people of India and it will be very difficult for us to convince those outside why we have had to resort to this sort of hustling a very important measure of this sort.

I agree, I entirely accept the hon. the Home Minister's dictum that all subversive and dangerous elements in the country must be put in their place.

Shri B. Das (Orissa): That we are doing today all right.

Shri Kamath: It is not enough that we say so and be done with it. The security of India is a very important consideration. The defence of India is equally important, and more important today. But we can not ignore the supreme consideration that civil liberties should be preserved and should not be done away with so long as the preservation of those liberties is not inconsistent with the security of the State, the stability of the State and the safety of the State. So long as the security of the State is not jeopardised by the preservation of those civil liberties— that is a fundamental dictum to which I am sure the Government will agree—we should be careful to see that adequate safeguards are provided in such a manner that the liberties of the individual are not encroached upon by the executive or suppressed by it at its whim or fancy. This observation of mine is provoked by the recent judgments of some High Courts in our country, especially the Bombay High Court where the judges on more than one occasion have observed that the executive has resorted to the suppression of civil liberties in an indefensible manner. They have also passed severe stricture upon the conduct of the executive and gone to the extent of ordering the immediate release of persons arrested and detained. The Bill was sent to us only this morning, and so I have not got all the material except from the High Court judgments, but one case I remember in which the Bombay High Court observed that persons were arrested for defying an order passed under the Criminal Law Amendment Act-- for taking out a procession, I believe,—but were detained under the Public Security Act so that they might be deprived of their right to defend themselves in the usual manner. This, the High Court has observed, is a gross abuse of the powers by the executive.

An Hon. Member: What year was that?

Shri Kamath: It was two or three months ago. Therefore I humbly submit that wherever action is taken or is sought to be taken by the executive for the detention of undesirable, or dangerous or subversive individuals, they should at the same time take care to see that these powers are rightly exercised, and we should see that the executive is given no loophole in our legislation for any abuse of their powers. After all human nature being what it is—I will not repeat the hackneyed dictum that, power corrupts—a man or an individual invested with power more often than not tends to overdo his part, and it has often happened not merely in our country—I do not refer to our country after

it has become independent but in olden times as well—but in other countries also, all the world over—that the executive have tended to overdo their part, and to abuse or misuse the power conferred on them by Parliament or the Legislature. Therefore it is incumbent upon us, Members of this sovereign House, who have not merely sovereign power, but also along with them obligations and responsibilities to the nation, to weigh at this hour the *pros* and *cons* of the measure that is now before us.

I shall in passing, refer to one or two features of this Bill where, I feel, the powe s that are sought to be conferred upon the executive might be abused or misused, and the individual against whom the executive has proceeded might suffer unduly and unfairly. When Article 22 was discussed in the Constituent Assembly, I was one of the few members who voiced their fears
12 Noon that perhaps we were out-doing or out-distancing some of our predecessors, especially in regard to the provision relating to preventive detention which is visualised in Article 22(7) of the Constitution. As regards that, I raised my feeble voice that that should not find a place in the Constitution, in any case not under the Fundamental Rights of the Constitution. The article, viewed as a whole, leaves one with the impression that the only fundamental right that is conferred by that article is the right to be detained without trial. It may be that after three months the case of the individual will be referred to the Advisory Board. In some cases which are specified it need not be so referred as the Bill specifically states. It would have been far more in consonance with the spirit of the Constitution and with the Preamble to the Constitution that that article relating to detention without trial had been assigned a different place in the Constitution and not included in Fundamental Rights. Be that as it may, we have accepted the Constitution, we have sworn allegiance to it, and now we are here to legislate in accordance with the principles of that Constitution. So, we the Members of this House should see how far the present Bill is in conformity with not merely the letter but the spirit of Article 22 of the Constitution.

Clause 3 of this Bill confers power upon the Central Government or any State Government to take action in particular cases. Where the defence of India, the relations of India with foreign powers or the security of India or a State thereof are threatened, I should have preferred if such powers to detain individuals under those categories had been conferred upon the Central Government and not upon the State Governments. It is true that we have got an Article in the Constitution, Article 258, which says:

"A law made by Parliament which applies in any State may, notwithstanding that it relates to a matter with respect to which the Legislature of the State has no power to make laws, confer powers and impose duties, or authorise the conferring of powers and the imposition of duties, upon the State or officers and authorities thereof."

But, if we had taken care to conform to the spirit of the Seventh Schedule which allots different subjects to the Union Government and the State Governments and also gives concurrent powers, we would have seen that this power of preventive detention of the first category, *i.e.* (a), is conferred upon the Union Government only. It is true that there is an enabling provision in the Constitution, in the Article to which I have just referred, which permits the delegation of powers by the Centre to the States.

May I plead with this House that these three subjects, the defence of India, foreign affairs and the security of India as a whole, pertaining as they do to the Union Government more than to a State Government, it would be far better that the power to take action under this category should be completely under the exclusive jurisdiction of the Central Government and not of the State Government notwithstanding the delegation of authority, as has been permitted by the Constitution? As I have already observed, we must conform to the spirit rather than the letter: the letter killeth, but the spirit giveth life.

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As regards the other two categories, the Constitution expressly and explicitly allows the State Government to take action in either of those cases.

Then, coming to the *modus operandi* of detention and subsequent action, I for one am not happy that a Sub-divisional Magistrate should be empowered to take action. After all, the District Magistrate is the executive head of the district and it does not stand to reason why a sub-divisional officer who is at headquarters—most of them are at headquarters—should act on his own and not consult or get the authority of the District Magistrate to pass such an order. There are or there were,—I do not know the position today,—certain sub-divisions which are known as independent sub-divisions and the sub-divisional officer is stationed at the headquarters of that particular sub-division, but he is however armed with the powers of a District Magistrate, he is designated as an additional District Magistrate and he in his capacity as additional District Magistrate can take action if this power were restricted only to a District Magistrate. I therefore suggest that the power should not be conferred on sub-divisional officers but it should be conferred only on District Magistrates or in a presidency town to the Commissioner of Police, and this provision conferring power on sub-divisional Magistrates must be deleted.

Then, coming to the constitution of the Advisory Boards, under Article 22(7) read with clause (4) of the same article, what do we find in this Bill? The hon. Home Minister was pleased to observe, if I heard him aright—I speak subject to correction—that he has even gone farther than what the Constitution has provided in so far as Advisory Boards are concerned. It passes my feeble understanding how we have gone farther than the Constitution. I admit I have not had the time to study the Bill in detail because of the paucity of time at my disposal.

Pandit Thakur Das Bhargava (Punjab): There is no provision with regard to the number of persons in the Advisory Board under Article 22, and so far as that provision is concerned, certainly the spirit of the Constitution has been observed.

Mr. Speaker: Hon. Members need not intervene. The hon. Member may proceed.

Shri Kamath: Article 22 of the Constitution has expressly provided for the constitution of Advisory Boards to consider cases of persons detained under this law. Sub-clause 2 of clause 8 of this measure provides for such a Board consisting of two persons only. I wonder how this will work in practice, a Board consisting of two judges to consider and report to Government as to the advisability or otherwise of continuing the detention of a person under this law. Would it not be far more practicable and desirable that the Board should consist of three persons and not two? Perhaps Government expects that the two persons would always agree as regards the detention of a person or advice about his release; but suppose they do not agree? Suppose out of the two persons one advises that he should be detained further and the other says that he should not be so detained, what will happen? Will Government have the last word in this matter? Will Government take the law of detention into their own hands and say that because the judges have differed in this matter, we agree with whomsoever we deem fit and the order of detention may be continued in spite of the fact that one of the members of the Board has recommended that the person should be released? Therefore, I suggest that this Board should consist of three persons at least. The hon. Home Minister was pleased to observe that though the Advisory Board, under the Constitution could only advise or report to the Government, he has provided in this Bill for

the report of the Advisory Board to be more or less binding upon the Government. If the hon. Home Minister wants to correct me, I will accept the correction, but that is what I heard. Let us see how the particular provision in the Constitution has been complied with. Clause (4) of Article 22 says:

"No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless—

(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention :"

Now, let us look at the measure in the light of this provision in the Constitution. Firstly, clause 9 of this Bill provides that within six weeks from the date of the order, the matter shall be referred to the Advisory Board. And clause 10 of the Bill provides that the Advisory Board shall report to the Government within ten weeks from the date of the detention order. So far so good. But what about the mandatory nature of the report to be made by the Advisory Board? The only provision of the Bill in this regard is comprised in clause 11, Confirmation of detention order, which says:

"In any case where the Advisory Board has reported that there is in its opinion sufficient cause for the detention of the person concerned, the Central Government or the State Government, as the case may be, may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit."

There is nothing in the Bill that has been brought before the House to make it clear beyond doubt that where the Advisory Board reports that the person concerned should not be detained further, he shall be released forthwith.

Sub-clause (2) of clause 10 states:

"The report of the Advisory Board shall specify in a separate part thereof the opinion of the Advisory Board as to whether or not there is sufficient cause for the detention of the person concerned."

As to whether or not there is sufficient cause for the detention of the person concerned, the opinion is submitted by the Advisory Board and—mark the wording of clause 11—after the receipt of the report of the Advisory Board the Central Government or the State Government may confirm the detention order. Of course they may release the detenu also but where is the provision in this Bill that in a case where the Advisory Board recommends the release of the person concerned it shall be binding upon the Government? Will it be purely advisory? The Constitution is explicit about it: there is a mandatory provision in the Constitution. It says "No law providing for preventive detention shall authorize the detention of a person for a longer period than three months unless etc. etc."—unless this Advisory Board recommends that he may be so detained.

The Minister of State for Transport and Railways (Shri Santhanam): What about sub-clause (b) of the same clause?

Shri Kamath: There is a separate provision in the Bill as regards preventive detention of second category, but I am now taking into consideration the cases where the matter is referred to the Advisory Board. There are cases where the matter need not be referred to an Advisory Board at all. They are a different category of cases. I am now referring to cases which have got to be referred to the Advisory Board. In these cases the detention cannot be prolonged unless the Advisory Board has reported that there is in its opinion sufficient cause for the detention of the person concerned.

Pandit Balkrishna Sharma: *rose*—

Mr. Speaker: I think it is better if the hon. Member is allowed to develop his own arguments and then hon. Members will have a chance to express their views.

Shri Kamath: This Bill provides for two categories of cases. One is detention of persons under Article 22(7), where Parliament passes a law under which cases of persons detained need not be referred to the Advisory Board. I am now confining myself to those cases where the Bill provides that they shall be referred to an Advisory Board consisting of persons who are, or have been or are qualified to be High Court judges. Therefore unless we make it clear, in accordance with the spirit of Article 22 of the Constitution that in those cases which have been referred to the Advisory Board, the opinion of the Advisory Board, whatever it may be (either to continue or discontinue the detention) shall be binding upon the Government,—unless that is made clear,—I am afraid the Executive will have powers which they might exceed in their zeal to maintain the security and safety of the State. Of this I am sure, because I was present throughout the debate on Article 22 in the Constituent Assembly. I am sorry that Dr. Ambedkar is not here but I very well remember how he even expressed the view at the end (it was his hope) that this provision in the Constitution may become a dead letter in course of time. I do not want to dwell on that, but I am clear in my own mind that the debate in the Constituent Assembly on this article left no doubt whatever that the opinion of the Advisory Board, wherever it has reported in cases referred to it, shall be binding on the Government. I submit that this point must be made clear in the Bill before the House.

Shri T. T. Krishnamachari (Madras): Nothing that we do in this House can alter the scope of Article 22 as it stands. My hon. friend is needlessly labouring a point which is evident.

Shri Kamath: I bow to the superior wisdom of a member of the Drafting Committee of the Constitution but my poor intelligence has raised certain doubts and I would appeal to those who are wiser than myself to clear the doubts that I have raised. I am only placing my doubts before the House and I hope that before the debate is over these doubts will be cleared, not only to the satisfaction of us here but also to the satisfaction of the nation, which is far more important. I referred to that point because the Bill refers to the report of the Advisory Board only in cases where the report has been to the effect that the detention may be continued. Otherwise Mr. Krishnamachari's point is valid; many of these provisions could have been done away with and the number of clauses curtailed and there would have been no need for incorporating so many provisions in this Bill: because the article is there and whatever is done contrary to the Constitution will be *ultra vires* of the Constitution and anybody who goes against it can be hauled up for violation of the Constitution. Why then provide clause 11? If Mr. Krishnamachari's point is right, clause 11 need not have been placed in the Bill, because the Board is there, its report will be with the Government, and they will have to act in accordance with the principles and spirit of the Constitution: When you provide for one class of cases where the Advisory Board reported in a particular way, it is incumbent upon us, if we want to be fair and just, that we should provide for the other class of cases, where the Advisory Board has reported in a contrary way, namely that the detenu should be released. We have provided for cases where the Board has advised confirmation or continuation. We do not provide for cases in the Bill where the Board has reported against the detention of a person. That is a lacuna in the Bill which must be cured (*Interruption.*) I did not hear the interruption of my hon. friend and therefore I shall take no notice of it.

I am glad that Dr. Ambedkar is back in the House, but I am not going to repeat my arguments.

I now come to the second category of cases which are envisaged by Article 22, clause (7) of the Constitution. It is very well and I am glad that we have provided the maximum period as one year. I am happy about this provision in this Bill. It was quite competent for us to provide for even five years, but we have in our discretion and judgment provided only for one year as the maximum period of detention under the second class of cases contemplated in this Bill. Here of course the Home Minister was right when he stated that we have provided in a greater measure for the safeguard of individual liberty than is contemplated in the Constitution, because the Constitution does not, I admit, make any specific provision for the constitution of an Advisory Board for this class of cases and the Government has brought this measure today which provides for the reference of these cases within a period of six months from the date of detention, I think an amendment is going to be moved later on, but that is a minor point—to an Advisory Board, rather for review by Government in consultation with a judicial officer not below the rank of a District Judge. I am referring to clause 12 of this Bill.

An Hon. Member: There is an amendment to that also.

Shri Kamath: That will come later on. I would suggest in consonance with the spirit of Article 22 that the officer whom the Central Government or the State Government will consult should be a High Court Judge. It is not enough that he is "qualified to be a High Court Judge" because this is a more serious category of cases where we are providing for detention for a pretty long period and it is therefore very essential that this class of cases must be reviewed by the Government in consultation with a High Court Judge—either who is a High Court Judge or has been a High Court Judge. It is not enough in this category of cases that he is qualified to be a High Court Judge because even an advocate of a few years' standing is qualified to be a High Court Judge. That, in my humble judgment, is not sufficient.

Then there is one provision in this Bill—I am referring to clause 10(3)—which, I fear, is somewhat retrograde and contrary to the spirit of Article 22. That clause reads thus:

> "Nothing in this section shall entitle any person against whom a detention order has been made to attend in person or to appear by any legal representative in any matter connected with the reference to the Advisory Board, and the proceedings of the Advisory Board and its report, excepting that part of the report in which the opinion of the Advisory Board is specified, shall be confidential."

I am only taking the first part of this clause which disentitles a detenu from being present in person or through his counsel. I believe that this measure is being enacted to cover those cases where the High Courts shall not be competent to issue writs of *habeas-corpus*. I am not quite sure on this point, but I fear that that is going to be the case.

Mr. Speaker: I believe *prima facie* it refers to the proceedings before the Advisory Board and not to the High Court proceedings.

Shri Kamath: This measure is, I fear, intended to cover those cases of detenus who would be deprived of the right to apply to the High Court for a writ of *habeas-corpus*, and therefore this Advisory Board has been constituted to deal with those cases. I am glad that the Attorney-General is also here, for the first time in Parliament.

Mr. Speaker: I am not clear on what basis he says that they will be deprived of their right to apply for *habeas-corpus* or such other remedies as may be open to them. I am not expressing any opinion, but I do not know on what basis he says so.

An Hon. Member: Article 22(1).

Shri Kamath: 22(1) is all right. Even granting that they will have the right to apply, to the Supreme or a High Court for writs of *habeas-corpus*, it is not wise for us to deprive a detenu of the right to appear in person or at least through his counsel before an Advisory Board also. If the House is pleased to refer to Article 22(1) of the Constitution that clause reads as follows:

"No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice".

It may be argued that the word "defended" applies only to courts of law. But the spirit of the article is that wherever any proceedings against him are going on he should not be denied the right to appear through his counsel. I can understand cases where the detenu is not permitted to appear in person, but certainly to deprive him of the right to appear even through his counsel, may be before an Advisory Board, is, I think, to say the least not a very wise provision. We may enforce very strict measures in the interests of safety and stability of the State, strict measures against the movement of detenus outside the jail premises,—but what harm is there and what do we lose—and so far as the psychological effect is concerned don't we gain—by providing that the detenu will have the right to plead his case before the Advisory Board through his counsel? Why should we deprive the detenu of the right of authorising his counsel to appear before the Advisory Board? That, I think, should be provided for in this Bill.

There are a few other matters which I shall raise when the clauses are discussed. I would say in the end only this, that I am at one with the Home Minister that the safety and stability of the State must be ensured, preserved and promoted. But may I also humbly submit that insofar as it lies in human power the civil liberties of individuals also must be safeguarded so long as they do not jeopardise the safety and stability of the State? It has been said that at a time when men and women are unjustly imprisoned, the place for the just man and woman is also in prison. The Prime Minister too—not latterly perhaps, but till some years ago—was fond of quoting this dictum. I do not for a moment say that our Government will deliberately and consciously arrest and detain persons unjustly and unfairly. But when we legislate in this fashion we must provide for certain safeguards, in the absence of which subordinate officers who are not endowed with much wisdom may in the excess of their zeal exceed the powers that we seek to confer upon them. May I hope and pray that the powers that we seek to vest in the Central and the State Governments through this measure will be exercised very fairly, wisely and justly, and sparingly too, and that no individual will be in a position to complain that his liberty has been curtailed even where such liberty did not endanger the safety and stability of the State? It is in this light and in this hope, the hope that these powers would be very wisely and sparingly exercised, that I extend my support to this Bill.

Dr. Deshmukh (Madhya Pradesh): The Bill has been very carefully explained by the hon. the Deputy Prime Minister while proposing its consideration by this House. There is no doubt he has made out a strong case as to why this emergency legislation should be passed without any loss of time. The reasons given by him are certainly cogent and they are, to a certain extent at any rate, convincing. Yet, we must take stock of the present situation and place the legislation we are going to pass today side by side with the Fundamental Rights embodied in Article 22 of the Constitution.

My friend who has just sat down has advanced many cogent arguments. He did not wish to oppose the legislation, nor does he wish that those who are curtailing the liberty of others should on the ground of civil liberties be let loose or be at liberty to harass people and to commit all manner or offences. But the reason why I feel inclined to speak and why I cannot repress what I wish to

say is that we were thinking, when we passed the Constitution, that we will turn a leaf and come to a time when preventive detention would not be necessary. That preventive detention is necessary, that a law of this nature is necessary, is not our fault—I quite grant that. Yet, I would have liked that the operation of this Bill or this Act should have been limited to the areas where we feel such a situation exists. There is in human nature a tendency to utilise short-cuts wherever they are available, and the reason why the words "preventive detention" are hated by the people of India at the present moment is that the powers of detention which have been given to the various Governments have not always been used discreetly. That is the reason why about our Governments—whether they are State Governments or the Central Government—there is a feeling amongst the people that we are overdoing our administration of law and justice and the maintenance of public tranquility and peace. It is from that point of view that I feel that it is unhappy that it was necessary for us, so soon after the Constitution was inaugurated, to come forward before this House with a Bill of this nature. My friend, Mr. T. T. Krishnamachari wanted to object to and clarify, or probably correct, my friend Mr. Kamath. I think I understood Mr. Kamath's point better than Mr. T. T. Krishnamachari. Mr. Kamath did not plead that this Bill was going to encroach upon the provisions of the Constitution—nobody can be allowed to do so. We have got an Article in the Constitution by which even the President can be impeached if he goes against the Constitution. So, there can be no possibility of any hon. Member of this House, however eminent, transgressing the Constitution as it stands. What my friend was trying to point out was whether we will not probably be forced, after passing this Bill, to come to a position worse than what we are in at the present moment. We are trying to cure a certain lacuna at the present moment by means of this Bill. The question is whether, if we put side by side with the provisions proposed in this Bill the provisions existing in Article 22 of the Constitution, Mr. Krishnamachari himself may not be called upon to say that these provisions contained in this Bill encroach on the Fundamental Rights and therefore must be held to be nugatory. That was the point which my friend was making. So far as I am concerned, I also feel apprehensive, the Bill evidently having been hurriedly framed, that we might probably have different High Courts, if not the Supreme Court itself, deciding that in spite of your efforts and in spite of what you have done by means of this Bill, you have encroached not only on the spirit but also the letter of the Constitution.

The difficulty I feel is so far as Article 22(4) is concerned. It says:

"No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless—

(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention :".

By the second sub-clause power has been given to Parliament for providing for preventive detention. Clause (5) of Article 22 says:

"When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order."

If we read these various provisions in this Article, it is quite clear that when we made the Constitution we had a certain amount of apprehension so far as provisions for preventive detention were concerned, and now when we find that so soon after the adoption of the Constitution circumstances have forced us to pass a Bill of this nature, I think care should be taken while passing the Bill clause by clause so that there is no possibility of encroachment on the liberties

[Dr. Deshmukh]

which we were, at a very recent date in the history of our existence, inclined to give to the people of this country. From that point of view, I would very much like the deletion of clause 10(3) which is concerned with the right of the person to be represented by any legal representative or to attend in person. It is more the spirit of the whole thing that counts than the letter of it. After all, the right to attend and engage a legal representative may not have been embodied in any Article of the Constitution, but when such emergency powers are conferred on officers and Governments under such circumstances, it is very, very desirable that facilities for legal representation should not be curtailed but should be made easily available.

Secondly, the Bill states that it extends to the whole of India. I do not think that this sort of situation exists in every State in India. Therefore, if it is possible, I would suggest that it may be modified to say that it will come into operation only in those States where the situation calls for the operation of this Bill. That will carry conviction to the people. It is our good fortune—and in the opinion of some, our misfortune—that people in this country have become highly critical. They have become aware of their rights and privileges, and any encroachment on them, which is likely to be misunderstood or misconstrued, must be avoided at all costs. Knowing as I do that there have been preventive detentions which were totally unjustified, I suggest that the operation of a Bill of this nature may be confined to the places where circumstances force us to apply its provisions because the situation has really gone out of hand.

With these observations, I support the Bill.

Shri Tyagi (Uttar Pradesh): The presence of the hon. Minister of Law, Dr. Ambedkar, is so provocative that I cannot resist the temptation of tickling his talents of law. I know he will reject me as a 'layman'. Still unless either he or the Minister of Home Affairs explains the full significance of this measure, it is not possible for me to vote for it. I want to understand what it really connotes. I quite agree with the hon. Sardar Patel when he says that the law and order situation in the country demands that persons detained lawfully for the maintenance of peace, order and tranquility should not, merely on account of some legal difficulty or lacuna, be set at liberty and allowed to create further trouble. If, according to him, they have been detained according to law, surely they must remain under detention as long as it is necessary. But I personally do not believe, as the lawyers do, in the judiciary having such a dominating power. I believe in an administration which must be more practical than legal.

[MR. DEPUTY-SPEAKER *in the Chair.*]

That apart,—I do not want to tease the hon. Ministers,—I only want to put a few questions. I would like the Home Minister or even Dr. Ambedkar, as he is here, if he can participate in the debate, to explain to me as to what will happen when this Act expires on the 1st day of April 1951. Supposing there are detenus on that day?

Pandit Balkrishna Sharma (Uttar Pradesh): They will not be let out. There is sub-clause (3) of clause 1.

Shri Tyagi: I do trust that my hon. friend knows less law than Dr. Ambedkar.

Pandit Balkrishna Sharma: Only I have read a little more than you have!

Shri Tyagi: Of course, everybody knows. But do not show off your learning like that.

Pandit Balkrishna Sharma: It is for your benefit.

Shri Tyagi: I know that you are more read than many in the House itself. But my hon. friend Dr. Ambedkar is still more read, and I want to consult the most read.

Shri Sondhi (Punjab): Is it 'read' or 'red'?

Shri Tyagi: Now, when this measure expires on the 1st of April 1951, people who were detained for more than two years or one year, will they remain in detention? According to my hon. friend Pandit Sharma they would. Supposing it were so, and they remained in detention even after the expiry of this measure, and supposing there is no necessity to renew this measure again, how will those people be released who have no fixed terms? They can be released only if a date of release is fixed. But if they are detained, as we were in British days, "until further orders"? I have passed days of detention in jail along with my hon. friend Pandit Sharma. In those days, we were detained "until further orders". If it is again a question of "until further orders" then under what law and when will those detenus be released? (*Interruption.*) I do not want to yield the floor to Pandit Sharma. I am more interested in provoking Dr. Ambedkar to reply. I want to know what would be the legal position,—under what clause or section will the orders of their release be issued, if they are detained until further orders and this law expires? There is a possibility of persons being detained until further orders also and no term has necessarily to be fixed. Under what provision will the Home Minister give orders for release in such cases,—unless, of course, there is some amnesty or mercy, or some such thing resorted to? That is one difficulty. I also want to know if the Home Minister will have, again, to come to the House for enactment of a similar measure? If the position is that within a year the situation is not eased and there is still the necessity to continue this measure beyond April, 1951 then I would suggest that it would be better that some provision to extend its life be made here and now, rather than come to the Parliament again.

Dr. Deshmukh: There will be no occasion.

Shri Tyagi: The facility of extending this measure must be provided now, instead of once again coming to the House on 1st April or 31st March, saying that the detenus are going to be released next day, therefore, we should pass another enactment. I suggest that while you are once doing this odious work, you may do it in full, why do it in instalments?

Then I come to clause 3(1). I find that a person may be detained in the interests of the defence of India, and for "relations of India with foreign powers." Now, our relationship with foreign powers is, in my opinion, not an emergent ground on which a man may be detained. This question of relations with foreign powers is a perennial and permanent one. So long as there is a country related with foreign countries, and so long as there are foreign countries, the relationship will exist. It has existed in the past; it exists today; and it will exist in future. It does not smack of any emergency. After all, other countries also have, in normal days, their relationships maintained with us. There must be some ordinary law of the land from which help should be taken to maintain these relations. Why does the Minister of Foreign Affairs or External Affairs take advantage of this enactment which relates to 'Home Affairs'? (*An hon Member*: 'Foreign country' means Pakistan.) This is an

[Shri Tyagi.]

enactment by the Home Minister. Why should the Minister of External Affairs take advantage of it? If he wants to control and safeguard relationships with foreign countries, which he is creating, let him come out with an enactment for himself.

Mr. Deputy-Speaker: It relates to a foreigner inside India.

Shri Tyagi: No, Sir. It is about our relationship with foreign countries, and foreign countries are not within India!

My submission, therefore, is that this is a matter in which the Press has always been allowed a free scope to criticise the policy of a foreign Government. Now, for instance, you have got Pakistan. A lot of alarming news is coming in from the other side of the border. Naturally, our Press must have the right to criticise the actions of Pakistan, although, technically speaking, we are on friendly terms. We belong to the same family, the commonwealth of Nations. Of course, our relationship must not be disturbed by alarming publicity; but all the same the Press in India must have the right to criticise the foreign policy of Pakistan, just as it has the right to criticise the policy of any nation like Britain, the United States of America or South Africa. I would, therefore, suggest that the hon. the Home Minister should not allow the Foreign Minister to utilise this piece of legislation for his purposes. This is only my view. Of course, I am open to conviction. Dr. Ambedkar always says that I am a layman. But my difficulty is that he refuses to open a "class room" and educate people like me. He is so selfish of the knowledge he possesses.

Then I come to sub-clause (1) of clause 8 which relates to the constitution of Advisory Boards. My own feeling is that it is a healthy clause and has also behind it the mandate of the Constitution. We must certainly have advisory boards to consider these cases. But I am inclined to think that it is not fair to entrust the States with the power of appointing these boards. It may be all right now. But there may come a time in India when all the Governments of the States may not be of one opinion. There may be one party in power in one State and another party in power in another State. If the States are governed by different political parties, these advisory councils may be politically biased and this will adversely affect the administration of this measure. I would therefore suggest that the power of appointment of the Advisory Boards must be vested in the Central Government; or at least the appointments made by the States must have the approval of the Centre. This will lead to uniformity in the working of this provision.

Deputy-Speaker: Does the hon. Member wish to proceed with his speech, or has he concluded?

Shri Tyagi: I have not yet concluded.

Mr. Deputy-Speaker: How many minutes more is he likely to take?

Shri Tyagi: I think at least 15 minutes, Sir.

Mr. Deputy-Speaker: The House will now stand adjourned till half past two.

The House then adjourned for Lunch till Half-Past Two of the Clock.

The House re-assembled after Lunch at Half Past Two of the Clock.

[MR. SPEAKER *in the Chair*]

Shri Tyagi: I have only to make one point. According to clause 11 of the Bill the intention seems to be that in such cases where the Advisory Board

has approved of the detentions, the Central Government or State Government as the case may be, may confirm the detention order and continue the detention of the same person for such period as it thinks fit which means that unlimited powers are given. Now I would draw the attention of the hon. Minister to Article 22 of the Constitution in which it is mentioned in clause (4) that:

"No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:"

Then there is also a proviso saying:

"Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7)."

Here the powers are restricted. My criticism is unless we know the maximum limit prescribed by Parliament extension cannot be given. This proviso demands that Parliament might, considering such enactments, fix a maximum limit to which the State Governments or Central Government can go in extending the detention of persons whose cases have been approved by the Advisory Board. Here instead of limiting the maximum we say in such cases 'the State Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit.' According to this Bill authority is given for unlimited extension in such cases whereas the Constitution demands that there must be a maximum limit fixed. This is a lacuna and I hope Dr. Ambedkar and my revered hon. friend Sardar Patel will kindly look into it and make up this deficiency.

In Article 22(4) there are two positions described. One was pertaining to such detentions as were approved by the Advisory Board. The other in (b) says that the detention cannot be extended for a period of more than three months unless such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).

So it warrants that this Parliament, before passing this Bill must prescribe the maximum limit, and must fulfil the demand of the Constitution in sub-clause (7) of Article 22, which says:

"Parliament may by law prescribe the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4)".

It is construed that this sub-clause gives the power of unlimited detention. It is not so. This serves only to define the circumstances.

(a) deals only with the description of the circumstances or the classes of cases in which a person may be detained. It has nothing to do with the period or term. Sub-clause (b) deals with the maximum term. It says:

"the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention".

Sub-clause (a) deals with classes and circumstances and sub-clause (b) with the term. Both of these things should be looked into before we discuss this Bill.

Pandit Balkrishna Sharma: Clause 12 is there.

Shri Tyagi: Clause 12 fulfils the requirements of (a) alone.

Pandit Balkrishna Sharma: And of (b) also.

Shri Tyagi: If it fulfils the requirements of (b) also, then you could not under clause 11 give unlimited power. So I submit that that is a matter which should be considered.

I support this Bill not because it is good in itself. It is a reactionary Bill and nobody in the House would ever want people to be treated under such sort of repressive laws but then the conditions obtaining in the country are such. Nobody can, at the same time, allow people—innocent boys and girls—travelling in buses to be bombed as is happening in Bengal. No civilized Government can allow that to happen. The Act, no doubt, is reactionary and repressive but the circumstances are equally such. The people who commit these crimes are not political parties; I would say they are criminal gangs for whose treatment this Bill is being enacted. I therefore feel that although it is a reactionary measure but perhaps reactionaries want to be dealt with only by reaction. I support its enactment.

Mr. Speaker: Before I call upon any other Members to speak, may I request the Attorney-General just to place before the House the legal position and the constitutional position on this matter?

The Attorney-General (Shri M. C. Setalvad): Sir, I will deal with the few legal points which have been made by the hon. Members as well as with the general aspect from the point of view of the Constitution. The Constitution, as we know, contemplates laws of Preventive Detention and takes care to circumscribe these within certain limits.

The Constitution guarantees the freedom of the person of the individual; but, it inevitably recognises that in certain circumstances that freedom may have to be curtailed and it provides the limits within which that freedom may be curtailed. No further than those limits can any law for preventive detention enacted either by a State legislature or by Parliament go. It is from that point of view that I wish the hon. Members to approach the legislation which has been placed before the House for consideration.

The circumstances which make the legislation necessary have been emphasised this morning by the hon. Minister. The question which arises for consideration is whether the measure is within the constitutional limits and further whether it accords not only with the letter but with the spirit of the Constitution.

The points which have been raised may broadly fall first under the group of what may be described as the period of detention. It has been suggested that the period prescribed by the proposed Act goes beyond what really is contemplated by the Constitution. That is, if one examines the measure, I say with submission, not correct. The measure divides detention, as you must have noticed, into two parts. Detention in certain classes of cases has to be examined by an Advisory Board. That Advisory Board is constituted in accordance with the provisions of the Constitution and the report of the Advisory Board is made obligatory upon the detaining authority. It is only if the Advisory Board reports that there is sufficient cause for detention, can the

detaining authority continue the detention or confirm the order of detention. But, if the Advisory Board reports that there is no sufficient cause, then, the detention would, under the present measure, fall to the ground.

An Hon. Member: Under what clause?

The Attorney-General: There is no need to provide for that by a clause because, the article of the Constitution would make any detention beyond three months illegal. I say this in reference to certain observations which were made in reference to clause 11 of the Bill.

Some observations have been made with regard to Clause 10 Sub-clause (3).

Pandit Balkrishna Sharma: On a point of elucidation, there is a doubt in the House as to the efficacy of Clause 11. Clause 11 does not expressly admit of the detention automatically ending in case the Advisory Board does not approve it. It only says that it can be extended indefinitely if the Advisory Board so advises the Government. Therefore, the doubt in the minds of some of the Members of the House is that as explicitly it has not been provided in Clause 11 for automatic cessation of detention in case the Advisory Board so advises; so that clause of the Constitution has not been followed in framing this particular clause. That is the doubt and I would request the Attorney-General to explain it.

The Attorney-General: I am obliged to the hon. Member for drawing my attention to this aspect of the matter. The position under clause 11 is clear. No doubt it speakes only of confirming the detention order and continuing the detention in cases where the opinion of the Advisory Board says that there is sufficient cause. It says nothing more. But, that does not mean that when the Advisory Board reports that there is not sufficient cause, detention can continue. On the expiry of three months, the detention *ipso facto* falls to the ground under the Constitution itself. You will remember that the Constitution provides for a maximum period of detention of three months except under certain circumstances. Under the Bill, we have first a period within which the matter has to go to the Advisory Board; then a further period, ten weeks in all, by which the Advisory Board has to make a report. If the Advisory Board makes a report saying that there is sufficient cause for detention, this clause operates; the order is confirmed and there may be further detention. Suppose the Advisory Board says there is no sufficient cause for detention. In such a case, detention will automatically lapse at the end of three months. It is for this reason that no provision is made to that effect in clause 11, I hope that makes the position clear to my hon. friend.

Shri R. K. Chaudhuri (Assam): May I ask a question? Here it is only said 'opinion of the Advisory Board'. Supposing the two members of the Advisory Board disagree, then, there is no opinion in favour of detention.

The Attorney-General: I am obliged to my hon. friend again. That is the exact position. The opinion of the Advisory Board contemplated by the Constitution and contemplated by the proposed legislation is the unanimous opinion of the two members. Take, for example, a case where the two members disagree. There would not be an opinion of the Advisory Board stating that there is sufficient cause for detention in which case again the detention will fall to the ground. That is the position under the proposed legislation.

I propose next to deal with some comments made on the provision...

Shri A. P. Jain (Uttar Pradesh): With your permission, Sir, may I say a word about what the Attorney-General has said about limitation?

Mr. Speaker: Does he want to argue the point?

Shri A. P. Jain: No, I want to ask a question.

Mr. Speaker: Yes

Shri A. P. Jain: It is this. In fact, the points raised by my hon. friend Shri Tyagi raise a two-fold issue.

Mr. Speaker: Order, order. Let him hear the Attorney-General first, so that he may clear all the points and then the hon. Member may put any questions.

The Attorney-General: I was next going to deal with clause 10 sub-clause (3), in reference to which certain comments were made. The comment was that no right to appear before the Advisory Board has been given to the detenu by this provision. In that connection, two things have to be borne in mind The first is the basic provision in the Constitution itself which provides for an Advisory Board. It is not an adjudicating Board; it is not a tribunal of justice which has to decide a matter; its function is merely to advise. That is why there is no question of the detenu appearing before the Advisory Board. We must not forget that provision is made that a representation has to be made by the detenu and that that representation has to go before the Advisory Board. So that, the Advisory Board has before it the representation of the detenu and it will advise bearing in mind that representation and also after calling for further information if the Advisory Board considers such further information necessary. It has also to be remembered that we are working to a time table. The whole thing has to be finished within a period of three months. The report has to be made within ten weeks. If we give an opportunity for hearing that would probably unduly delay matters and make the functioning of the law difficult. That is why no provision for hearing has been made. This accords entirely with the spirit of the Constitution, because, as I have already said, the Board is an Advisory Board.

A further point may be noticed. As the hon. Minister pointed out, the proposed Act goes much further than the Constitution in providing a safeguard, that is, in providing for a scrutiny by a judicial authority even in the class of cases in which the Constitution does not make this obligatory. That has been provided for by way of abundant caution, the desire of the Executive being to be advised even in these cases by the Judiciary within a period of six months from the date of detention. Therefore, it appears to me that, examining the provisions from the point of view of the Constitution—not only from the point of view of the letter of the Constitution, but also from the point of view of the spirit of the Constitution—what is provided for is completely in accord with it.

I think I have dealt with all the legal points raised. If there are any other questions on which elucidation is necessary I shall be glad to furnish it to hon. Members.

Shri A. P. Jain: 'Preventive detention' here is divided into two categories. Clause 11 deals with cases which come under (iii) of part (a) of sub-clause (1) of clause 3. The rest of the preventive detentions, namely, which come under (i) and (ii) of part (a) of sub-clause (1) of clause 3, are dealt with under clause 12. Now with regard to clause 11, two points arise, namely, (1), if the Advisory Board recommends that the detention order is not based on sufficient grounds the answer given by the Attorney-General would be satisfactory. I agree with it But there may be cases (2) in which the Advisory Board agrees that there are sufficient grounds for detention, and then the order of detention may be extended for such period under the present clause as the Government thinks fit.

Now let us examine whether that position is correct. The question is, that, when the Advisory Board agrees that there are sufficient grounds for detention, whether any maximum period should be prescribed or the Government should be given power to extend the period of detention to any period that it likes. I will refer you to clause 4 of Article 22 of the Constitution which says:

"No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless—

(*a*) an Advisory Board consisting of persons who are, or have been or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention :

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7)".

To my mind this proviso makes it compulsory that a maximum period should be prescribed as provided under sub-clause (b) of clause (7) of Article 22. Now, clause 12, as I said, does not refer to a detention under (iii) of part (a) of sub-clause (1) of clause 3. It refers to other detentions. I will read it out:

"Any person detained in any of the following classes of cases or under any of the following circumstances may be detained without obtaining the opinion of an Advisory Board for a period longer than three months, but not exceeding one year from the date of the detention order, namely, where such person has been detained with a view to preventing him from acting in any manner prejudicial to—

(a) the defence of India, relations of India with foreign powers or the security of India."

That is sub-clause (i) of part (a) of sub-clause (1) of clause 3. And then we have:

"(b) the security of a State or the maintenance of public order."

This is sub-clause (ii) of that clause and has nothing to do with section (iii). Now, what I submit is this: When a case falls under sub-clause (iii), that is, the maintenance of supplies and services essential to the community, which by virtue of clause 9 has to go before an Advisory Board, you should provide for a maximum period, which in my opinion should be one year.

An Hon. Member: It does.

Shri A. P. Jain: That is your opinion, but not mine. I think apart from the legal ground, there is substantial moral justification why that maximum period should be provided, because the other two kinds of cases, namely the defence of India, the maintenance of public order, etc. have been obviously treated as matters of a graver type, as you have not provided that these matters should go before an advisory board. For those cases you have fixed the maximum period as one year. I agree. But then it looks to me incongruous as something which does not fit in with the scheme of your Bill that in a minor matter Government should be given the power for unlimited detention, whereas in a graver matter it should have the power of limited detention for one year.

The Attorney-General: I could not appreciate the hon. Member's point. He has missed the point, namely, that the Bill has been proposed to be in force only for one year. That is why no provision of the kind he has suggested has been made.

Shri Tyagi: But the punishment can be for a longer period.

The Attorney-General: As soon as the Act expires, detentions under it must come to an end.

Hon. Members: No. Sir.

Mr. Speaker: I think in matters of law we should accept the opinion of the Attorney-General. This is particularly so in the case of Members who are not well conversant with law.

Pandit Thakur Das Bhargava: We can differ from him.

Pandit Balkrishna Sharma: I want the House to understand the language used in sub-clause (8) of clause (1). It says:

"It shall cease to have effect on the 1st day of April 1951, save as respects things done or omitted to be done before that date."

I want to submit that if this Bill is to expire on 31st March 1951 and if on 31st March under this Bill some people are detained for one year, then necessarily their detention would not end on 1st April 1951.

Mr. Speaker: I feel myself a difficulty in another way. Unless I am wrong, hon. Member also have that same difficulty. Is it necessary that an order of detention should mention the period of detention? I take it that it will usually be till further orders. That is the whole point of difference.

Shri Tyagi: Then what is the fun of having a maximum period?

Mr. Speaker: There is no fun in that. But the effect is that after this maximum period, no order for further detention can be passed. That is the fun of it. The question seems to be based on a misapprehension.

The Minister of law (Dr. Ambedkar): A distinction has to be made between 'conviction' and 'detention'.

Mr. Speaker: If there is a conviction, there is detention for a specific period under the law.

Dr. Ambedkar: Under the law.

Mr. Speaker: Yes. In the case of a detention 'till further orders' means that on the 31st March all orders fall to the ground.

Sardar Patel: That was the order under which Mr. Tyagi was detained.

Mr. Speaker: There was another point which an hon. Member had urged. His point seems to be this: That under sub-clause (b) of clause 7 of Article 22 of the Constitution some maximum has to be provided. Here it is the life of the Act which provides the maximum and there is no need for any specific provision for that.

The Attorney-General: That was the point raised by my hon. friend. May I deal with it? The provision of the Constitution to which he drew attention, namely, the proviso to 22(4)(a), in no way makes it obligatory on Parliament to provide a maximum. It may or it may not. In this case we are not providing for the maximum for the reason which I indicated, namely that the Act comes to an end in a year's time. The maximum which we are providing for is not under (b) but under (a) of clause (7) of Article 22. The Constitution does not in the proviso say that a maximum shall be provided by Parliament. All that it says is:

"Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament."

This means that if there is a maximum period prescribed, then the detention shall not extend beyond that. There is no provision stating that Parliament shall fix such a maximum. If one looks at Article 22 (7), one will find that it reads "Parliament may by law prescribe". Therefore the provision of a maximum is optional to Parliament. Parliament here would prescribe it under (a), but it does not propose to prescribe it under (b) of

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Article 22 (7) for the simple reason that the Bill itself will come to an end in a year's time and therefore no maximum is necessary to be provided for under (b).

Shri Kamath: Does not the word "may" here have the force of "shall"?

Mr. Speaker: If there is any constitutional difficulty or classification required over construction or interpretation, then such questions might be put. Otherwise, they become questions on merit.

Shri Tyagi: I wanted to know, Sir, whether this could be declared as *ultra vires*.

Mr. Speaker: He has already stated that it is not going to be treated as *ultra vires*.

Shri A. P. Jain: If you will permit me, I would like to submit, and submit most respectfully, that the interpretation that all detention will become illegal on the 1st April 1951 is not a correct interpretation. I just want to place my point of view before the House if you will permit me. If you do not permit me I will sit down.

Mr. Speaker: I do not think that it is going to serve any useful purpose, but if he can state it briefly, he may do so.

Shri A. P. Jain: Sub-clause (3) of clause 1 says:

"It shall cease to have effect on the 1st day of April, 1951, save as respects things done or omitted to be done before that date."

Now if a detention is ordered for a period of one year on the 31st March 1951, it will continue in force even after the 1st April 1951, for it will be an act done before the Act ceases to have effect.

The Attorney-General: May I explain the expression which the hon. Member has just referred to, "save as respects things done or omitted to be done before that date". That is a compendious expression which summarises what is found in regard to repeals in the General Clauses Act. We have got clauses in the General Clauses Act which define the consequences of the repeal of an enactment, but there is no provision in the General Clauses Act as to the effect of the expiration of an Act. Therefore it is necessarily when a law is made with the provision that it will expire on a particular date, to provide in the law itself the consequences of the expiration. It is these consequences which are provided for in the expression "save as respects things done or omitted to be done". That provision does not authorise further acts to be done under the Act after its expiration. Nothing further can be done. Therefore no continuation of the detention after the Act has expired can be made by reason of this provision.

Shri Masani (Bombay): I am sure the clarification given by the Attorney-General has removed some of the apprehensions entertained by Members of the House. Even putting the most favourable construction on the clauses of the Bill, it cannot however, be denied that it contemplates a far-reaching encroachment on the rights of the individual citizen. In fact, the hon. the Home Minister has himself admitted that such an encroachment or curtailment is called for by the circumstances that have necessitated this measure. That being so, I think the fullest expression needs to be given to the very widespread feeling in this House that it is enacting this measure with the greatest reluctance and the greatest regret. This Parliament will lay itself open to the most serious mis-construction if that sense of reluctance and disquiet is not given adequate expression. In passing this Bill the House will be incurring a grave obligation

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to the citizens of this country to see that nothing is done under this measure which goes a single inch beyond the needs of the case, and it imposes a similarly heavy burden on the shoulders of the hon. the Home Minister, shoulders which we all know are broad enough to take this unpleasant burden and which we all pray will be strong enough to bear it. The hon. Minister has asked us to agree to a summary acceptance of this measure setting aside the various provisions in regard to procedure on account of a grave emergency, and I think it must be conceded that it is only in the face of an almost mortal challenge to the security of the State that such an action can be justified. Rather than deal with the various provisions and clauses of this Bill, I would therefore venture a few observations very briefly on the nature and existence of the challenge which we are meeting by this measure and the best and most effective way of dealing with this menace.

The hon. Minister has referred us to the evidence that is available and which has been published of the danger to the security of the State that comes from the Communist menace. I will not question the weight of this evidence. I think the days are long past when there could be any serious question about the deliberate nature of that challenge to all ordered society, and on the basis of that evidence, published and unpublished, the hon. Minister has stated that there is a grave danger to the existence of the State and to society, that the need has arisen to preserve the independence which we have only recently won, and that the basis of society is sought to be undermined by people with whom this measure is meant to deal. These are very grave and far-reaching statements, but I personally have no doubt that they are entirely warranted by the facts of the case.

Having said that I sympathise with the plea made by my hon. collegue, Dr. Panjabrao Deshmukh, that the measure should be limited in its scope to the needs of the situation. I would venture, however, to differ from him in the plea that he has made that such limits should be geographical or provincial. I venture to disagree with him, because not only is this threat nation-wide but it is world-wide, and therefore to try to deal with it in provincial terms is to ignore its very nature. I do feel, however, that the scope of a measure like this needs to be defined, to be limited, not geographically, but in relation to the quarter from which the challenge comes. This Bill in form deals with any citizen of this Republic. It does not attempt to catagorise those people to whom it is meant specifically, and primarily, to apply. I think that need to limit it is there. The issue that arises is whether those who want to destroy democracy should be given all the latitude and all the freedom that the civil liberties of a democratic constitution enjoins. That is the real question—and I would not hesitate to reply that those whose creed or dogma it is to destroy the very foundations of democracy have no right to live and flourish so that they may destroy democracy with its own weapons. A democratic society has a right to deny those liberties to those who do not believe in their very existence.

If I may give the benefit of experience of what has been done in this direction in a part of the world which is remote from ours, and where I had the honour to represent this country, I would cite to you the example of the Constitutions and laws of the Republics of Brazil and Chile. They deal specifically with this matter and, I would submit, in a much desirable form. The Constitution of the Brazilian Republic lays down that the benefits of the Constitution shall be available to all democratic parties, but shall be denied to

those who do not believe in the principles of democracy, namely, the plurality of parties and the fundamental rights of the human being. Under that clause of the Constitution, a law suit was framed before the supreme tribunal of the Brazilian Republic and that Supreme tribunal after hearing both sides, including the Communist Party of Brazil, came to the legal and judicial conclusion that the Communist Party of Brazil believed neither in the plurality of parties where it had power nor in the rights of the individual as against State dictatorship. It also found that the Communist Party of Brazil was a Fifth Column of a certain foreign totalitarian Dictatorship. Having established these judicial propositions all legal and civil rights have been denied to those who can be proved to adhere to this Party. In Chile, the position is somewhat different. There is no provision in the Constitution to deal with such a threat, but a law passed by Congress, called the Law for the Preservation of Democracy, has laid down that wherever any group aims at the seizure of power by force and believes in a dictatorship and not in the principles of democracy, then such a group shall be denied all the benefits of the Constitution, and under this Law for the Defence of Democracy, Members of the Communist Party and their adherents are denied the rights to be elected to any public organization, whether Parliament, Municipality or Trade Union, and thousands of them have been struck off the electrol rolls under the provisions of this law. These laws are of a far-reaching nature, but they are taken on the basis of a principle against a proved menace. I feel that this Bill, which according to its authour is an improvisation meant to deal with an emergent situation created by certain factors beyond our control, can be replaced and should be replaced as soon as possible with a measure of a more principled nature, a measure which, apart from its being principled, can be explained to the people of this country, because I do feel that unless we can educate our democracy to the peril which it is facing and arouse it to a defence of their democratic rights, those who introduce this measure and those who pass it are liable to be misconstrued and misunderstood and public sympathy may be easily inflamed and public sentiment is liable to go to the side of those who are the enemies of democracies. This is what is actually happening today, and if I make this plea that this Bill should be replaced, it is not that it should be replaced only at the end of one year, but if possible earlier with a measure which labels, isolates and points out the danger, which says from which quarter it comes and educates public opinion to that danger. Then I am sure the people of this country will rally in support of such a measure for the defence of democracy. If such a measure does not point out where the danger is, if there is a failure to point out and label the source from which the mischeif comes then there is a danger that it will be misconstrued and the benefits will go not to those who want to defend the law, but to those who want to subvert it.

We are apt to deal with the symptom and not the disease itself; we are apt to deal with innocent instruments and not with those who instigate and inspire them, and I think the time has come in the history of this country when an effort should be made to get at the source of the mischief and not to deal with the symptom on the surface, to go deep into the matter and find out where the inspiration for this disruptive activity comes from. I make this plea to the hon. Home Minister that it would be greatly appreciated if this Bill, which is a hasty improvisation, could be replaced at the earliest possible time by a well conceived, well thought-out measure, which does not shirk the issue, which goes to the root of the mischief and which frankly takes its stand for the defence of democracy against totalitarian aggression from within or without.

Pandit Thakur Das Bhargava: I rise to support this measure. It would rather look strange that I, who am so enamoured of the Fundamental Rights

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of the citizens of this country and who had fought so hard in the Constituent Assembly also in regard to them, am supporting this measure. Before giving the reasons for my support, I would take this opportunity of congratulating the High Court which has passed the order, which has given rise to this Bill. I am very glad that the High Courts in this country are behaving with no less courage than the High Courts in the bureaucratic India did. The High Courts are a part of this Constitution and I hope that our High Courts will preserve the liberties which have been guaranteed by this Constitution. After congratulating the High Court for its part, let me congratulate the hon. the Mover of the Bill, for he has not allowed the grass to grow under his feet and has brought this Bill. I see some signs of haste in this Bill. I am not fully convinced of the utility of all the provisions in this Bill, but all the same I consider that this Bill is very well timed and should have been brought in as early as possible. I hope that before the end of this day, I will be able to congratulate myself and this House also because we would have passed this Bill into law.

So far as the Bill is concerned, I do not see that all the provisions which Article 22 envisaged should be enacted by the Legislature have been brought into this Bill, for instance under clause (4) (a) proviso it is stated:

"Provided that nothing in this sub-clause shall authorize detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7)."

We have not included any such provision in this Bill. I do not find any provision which would answer the requirement of the proviso to 4(a). We have not provided in this Bill under this proviso what shall be the maximum period of detention and that has given rise to all the legal arguments that have preceded and if we had provided that there would have been an end to all those arguments. We must realize that this Bill is to remain in force only for one year. I hope, when we enact a permanent measure in accordance with the provisions of Article 22 of the Constitution we shall provide for all matters and we shall look into the provisions of that Bill more carefully because there are certain other matters in this Bill which are to my mind not according to the spirit of the Constitution. All the same, we must realize that there is an emergency. So far as the emergency is concerned, there can be no two opinions in this country. The emergency caused by the judgment of the High Court is quite separate from the emergency which we find stalking in this country. This is a situation which is not emergency as envisaged in Article 352 of this Constitution which is a more serious affair. My hon. friend Mr. Kamath was speaking of the civil liberties and I have heard others in this House speak about civil liberties. Under Article 359 all the fundamental rights must remain in suspense when the emergency is declared under Article 352. Thus this Bill is designed to avert that emergency. We do not want that emergency to overtake us. This is only intended to avert that emergency so that we may be able to control the situation. By doing so, the emergency can be averted If it comes, we shall be ready to meet the challenge.

Shri Kamath: I only wanted adequate safeguards.

Pandit Thakur Das Bhargava: This Bill is an adequate safeguard if the emergency should come. If the emergency comes, where will the civil liberties be? Therefore let us try to meet the situation and avert the emergency. We know what has happened in Calcutta, we know what the Communists are doing and what the other anti-social elements are doing. In view of that, Sir, I think this is a situation in which we should take courage in both hands and do our duty manfully. The country expects from the Ministry and this House

to tackle the situation and enact measures suitable to the occasion and in my opinion this Bill is calculated to secure the desired end during one year. In regard to the various provisions of this Bill, I do not want to.....

Shri R. K. Chaudhuri: May I know if this Bill has originated on account of an emergency which has arisen in this country under Article 352?

Pandit Thakur Das Bhargava: I am sorry that my hon. friend has misunderstood me. If there was an emergency, under Article 352 the whole Constitution would have been suspended under Article 359. Then there would have been no Fundamental Rights. With a view to avert such an emergency, the present situation is sought to be controlled by this measure, so as not to allow such an emergency to arise and if it did to overcome it. It is not so to speak an emergency measure. It is a measure which is designed to see that such an emergency does not arise and if it does to overcome it also.

Shri R. K. Chaudhuri: If this is to prevent an emergency by legislation.....

Mr. Speaker: Let there not be any running arguments. The difficulty is that some hon. Members are engaged in private conversations while an hon. Member is speaking and then they catch up certain things without the context. That is the difficulty.

Pandit Thakur Das Bhargava: I do not propose to go into detail with regard to the provisions of the Bill. I want to touch only a few of them.

Objection was taken on the ground that the State Governments should not have been allowed to deal with the relations of India with foreign powers or with the security of India. There is ample provision under Article 258 in the Constitution itself. So far as the defence of India, the relations of India with foreign powers, the security of the State or the maintenance of public order are concerned they are matters of very great importance and in my humble opinion every State should have been allowed to deal with them and therefore it is but proper that we have a provision of this nature. Also with regard to sub-clause (2) the sub-divisional magistrate and the district magistrate are only allowed to deal with parts (ii) and (iii) of this clause and not part (i).

With regard to Clause 12, if a Statute of a permanent nature came before the House I would not be disposed to allow the 'maintenance of public order' to be contained in the classes of cases in which an Advisory Board is not to be appointed. At present the disturbance of public order and the security of the State overlap each other and are one and the same thing and if public order is disturbed the security of the State is most likely to be disturbed in the present situation. Therefore in the present measure I do not raise the objection.

In regard to the powers of the Advisory Board, I feel that the powers are not plenary. Attempt has been made by the Attorney-General to justify that a person detained may not be entitled to be present in person. So far as the present provision goes the Advisory Board can certainly allow a detenu or his lawyer or legal representative to appear before them and represent his case. All that the proviso says is that the detenu shall not have that right. At the same time when I look through clause 5 I find that the material before the Advisory Board will be very meagre. After all the grounds of detention will be there. Any representation which the detenu makes will be there. Further statements which the Advisory Board asks the Central Government to put before them will be there. I would have liked that this Board had been given the powers of summary enquiry in respect of matters placed before them. It is not an Advisory Board in the sense that it tenders advice. Its orders will be final. If in its opinion there is not sufficient cause for detention, the Central Government must release the person so detained. Therefore the powers of the Advisory Board are certainly very plenary, because if that Advisory Board

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says that there is sufficient cause the Central or State Government can confirm the detention for an indefinite period. In spite of what I have heard from the Attorney-General my view is that if the Board gives its opinion that there is sufficient cause for detention the Central Government can continue the detention for such period as it thinks fit. There is nothing to show that the detention shall end on the 1st of April 1951. Therefore when the permanent measure is brought before the House we shall enact suitable provisions and invest the Board with sufficient powers to do justice.

As regards clause 11 it would have been better if it had been expressly said that the report of the Advisory Board will be final. The words used in the clause are "may confirm the detention order and continue the detention of the person concerned". If it had been expressly said that the Board's report will be final it would have been better and the clause would be self-sufficient. We have to read this provision along with Article 22 and only then the meaning is clear. If we take it by itself it is not sufficient. But even if the present provision remains as it is, there is no harm and nobody will be misled by it.

With regard to the question whether an order passed on the 31st March, 1951 will have no force on April 2, 1951, my submission is that the order will not die *ipso facto* as soon as the Act expires. In my humble opinion for one year more the person shall be kept in detention. There is absolutely no reason why the detention should cease. These words are not without meaning: "It shall cease to have effect on the 1st day of April 1951, save as respects things done or omitted to be done before that date". If an order is passed before that date the order will be perfectly valid and will not die a natural death on the 1st April 1951.

Mr. Speaker: Under what law will it continue to have effect?

Shri Tyagi: And the convictions continue?

Pandit Thakur Das Bhargava: In regard to convictions it is different: the period is prescribed. But with regard to detention law the position is absolutely different. I wanted to put in Article 22 of the Constitution that no person shall be detained beyond the necessities of the case and then it should be incumbent upon every Government to see that no person is detained unless it is absolutely necessary. This would have been a natural check. These words "save as respects things done or omitted to be done" are not meaningless. I can quote an authority also, XXXI Allahabad, page 776. Under the Criminal Law Amendment Act there were many convictions and detentions. The detentions were continued, though the pending cases expired at that time. Therefore I submit that there is nothing under this law that all the effects of the law will be effaced as soon as this law comes to an end. The principle is there to sustain the effect of the orders made and unless there is a specific provision that detention shall cease with the Act, my submission is that detention is bound to continue. There is no reason why it should not continue.

I would say only one word more. Every day in every place one hears criticisms against the Government. People say that we are not having as much liberty as they had before. Honestly speaking though people may have new ideas of liberty, there are the obligations of liberty, of our being citizens of the Republic and our duties and responsibilities have changed too with the advent of the Republic. It is no use indulging in criticism of the Government without reason or rhyme. This is entirely wrong. We must see that the tree under which we live and prosper is not cut at its roots. Therefore, every person who is not loyal to the State has no right to complain that his civil liberties are being taken away when he sets himself to subvert the security of the State. Unless he satisfies the obligations of citizenship what right has he to say that

all the rights of civil liberties should be given to him while he chooses to indulge in criminal license. We must change our mentality towards the new Republic and it is in this light I say that public will receive this Bill with a measure of delight and satisfaction as this measure is only directed against those who seek to subvert the State and disturb public order.

Shri R. K. Chaudhuri: After a great deal of hesitation as well as with a heavy heart I rise to support this motion. If this Bill had not been sponsored by our Deputy Prime Minister, to whom we largely owe our liberty, if it had not come from the Cabinet of which the hon. Pandit Jawaharlal Nehru is the head, who is known throughout the world as the champion of liberty, I would have had a absolutely no hesitation in declaring this piece of legislation as a "black Bill". (*Interruption*).

[* * * *Portion deleted under orders of the Speaker.*]

The sum total of this Bill is this: For three months any person can be detained and no reason need be assigned for his detention. If any officer—a sub-divisional Magistrate or a Commissioner of Police—detains him and if the officer says that the reason for the detention cannot be disclosed in the interest of the public, then that man, whatever may be his position, can be detained for a period of three months without his knowing throughout his life any reason for his detention.

Pandit Thakur Das Bhargava: The grounds must be communicated.

Shri R. K. Chaudhuri: The grounds need not be disclosed if it is against the public interest. Who is going to say whether it is in the interest of the public or not? It is the officer who is detaining him. So the position which this Bill envisages is this that any person, no matter what his position may be, can be detained by a Commissioner of Police or a sub-divisional Magistrate, and if the officer does not choose the reason there is nothing to force his hands to disclose it. That is the position envisaged in this Bill.

What is more, if this detention is for meeting a grave emergency I can understand it. But this detention can be for reasons stated in clause 3. This detention can be effected if the Central Government is satisfied with respect to any person that with a view to prevent him from acting in any manner prejudicial to the "maintenance of public order" it is necessary so to do. Maintenance of public order is an ordinary function of the police and the magistracy. No war has been declared up till now. No state of emergency has been declared. Even then we need not require this piece of legislation "to maintain public order" in this country. The term "public order", as we know from our experience, is a very lax term. This provision can also be applied if there is any disturbance in the maintenance of supplies and services essential to the community. By this clause you are authorising the officer to take action against any labour leader. This is an ordinary function for which legislation is already there. When services essential to the community strike, if the employees of a mill strike, then also you can bring in the provision of preventive detention. I submit that we should realise to what extent we are going by passing this piece of legislation as it stands. I would welcome this Bill and would invite every Member of this House to welcome it if it is meant as a preparation for a war, which is bound to come and which must come. I would understand that. I have just now received a wire from Dhubri, asking me to press on the Government the necessity of putting some regiment on the Dhubri border because they are apprehensive of an attack from Pakistan. This morning I received another telegram from the Khasi Hills border where they state that "the Government of India is absolutely indifferent to the miseries and tortures and oppression which is being perpetrated on the people of Sylhet from where a large number of refugees are coming." If the hon. the Deputy Prime Minister will take us into his confidence and tell us that this is meant

[Shri R. K. Chaudhuri]

merely as a preparation for war then there will be absolutely no dissentient voice so far as this piece of legislation is concerned. But if it is intended only to put back into jail those men who, as a result of judicial determination, have been released and who are bound to be released by the orders of the High Courts, then I respectfully submit that this is not the kind of legislation that we should adopt. This legislation must undergo substantial amendment before we can accept it. But there is no time today either to think of amendment or to consider this Bill carefully.

Another point which I should like to make out is that so far as the detention order of an officer is concerned it has to be submitted to the Government under sub-clause (3) of clause 3. But there is absolutely no provision that the Government may then and there cancel the order of detention which is made by an officer. There is of course a provision of revoking the order at any time by the State Government or the Central Government, but I doubt very much whether that order would come into play and authorise the State Government or the Central Government to pass an order of cancellation immediately on receipt, if they consider so fit, of a report from the officer concerned.

Then another very serious provision has been incorporated in clause 5 which empowers an officer to deport or send out a person, in respect of whom he passes an order of detention, to any place outside his territorial jurisdiction. By that a Sub-Divisional Magistrate of an outlying station can deport a person and have him detained in some place outside his territorial jurisdiction or even outside the State where he is passing that order. In this respect, clause 5 has either to be deleted altogether or there should be some clear provision that the Sub-Divisional Magistrate or even the District Magistrate cannot pass an order to send the man away outside his territorial jurisdiction.

I also find an innovation in law so far as clause 6 is concerned. Ordinarily, supposing a man in respect of whom a charge is made cannot be arrested by warrant or he does not appear before the court, then when he is arrested or brought before the court, no additional punishment is inflicted on him for his not being produced before the court for so long. But here, for the mere fact that a certain notification has appeared in the Gazette, of which he cannot be cognizant at all, he will not only be detained for the period in respect of which the order has been passed, but he also becomes liable to criminal prosecution and conviction. Conviction and sentence do not find a place in such emergency measures. The object of these measures is not to convict and sentence a man to imprisonment but to keep him out of harm's way, and therefore no conviction actually takes place. But here, for the mere fact that a man does not appear before the court in response to a notice, or because a man cannot be produced in due time—may be through the inefficiency of your police—because of that he becomes, under this law, liable to conviction and imprisonment. That I submit is an innovation in the field of criminal law.

Then, I am glad that our friend, the Attorney-General, has made it perfectly clear that where there is a difference of opinion between the two members of the Advisory Board, then detention is not possible. I would have liked this point to be made further clear by a provision in this Bill itself so that there may not be any doubt in this matter. But I do not see the usefulness of having only two members on the Advisory Board because the two may disagree; particularly if they are doctors of law, they might disagree and the result will be that there will be no detention.

I perfectly agree with the views expressed by my hon. friend Mr. Jain as also by Pandit Thakur Das Bhargava, that clause 11 leaves great room for doubt. We here may be over-awed by the opinion of the Attorney-General, but there is no certainty that his opinion will be acceptable to the High Court or the Supreme Court. Therefore, if really it is the intention of the Government

that beyond March 31, 1951, there shall not be any detenu under the provisions of this Bill, that fact may be made clear so that we may be quite satisfied with regard to this point that, notwithstanding anything contained in this Bill and notwithstanding any interpretation that may have been made in the past of such provisions, no person shall be detained after March 31, 1951, as a result of any order passed under this Act.

Although it has not been stated clearly, I think it is clear that even though a detenu cannot claim the right to appear personally or the right for his legal representative to appear on his behalf, there will be nothing to prevent his appearing, or his legal representative's appearing, if the Advisory Board or the Government desire to have him brought up for interrogation. I suppose it is perfectly clear that the Advisory Board can allow a legal representative of a detenu or the detenu himself to appear in order to explain the position before the Board or the Government or before the officer concerned.

Men are not infallible. There may be mistakes made by the Government or by an officer however highly placed he may be. So, in cases where a report is made by an officer to the Government or where an application is made on behalf of or by the detenu, if from the records it is clear, or if from reasons which are known to the Government or to the Advisory Board it is clear, that a man may be released on suitable personal recognizances, he should be released without further detention. Those points also should be made clear in the provisions of this Bill.

Prof. K. K. Bhattacharya (Uttar Pradesh): I rise to support this Bill. I am one of the staunchest adherents of civil liberties and I would have been the last man to support this Bill if I had not been convinced, after listening to our Deputy Prime Minister, of the necessity for bringing this Bill. After he stated his reasons and the conditions prevailing in the country, which we are also, witnessing with our own eyes, I am convinced of the utility of passing this Bill.

It is an undoubted fact that the civil liberties which we are enjoying are themselves the product of the law and those who endanger civil liberties, those who sabotage the State and want to bring about chaos and confusion in the country, put themselves outside the pale of the law. Under these circumstances, we view with equanimity this Bill as it stands. The Bill provides sufficient safeguards, namely the constitution of Advisory Boards. With regard to the Advisory Boards which functioned in England during war-time, there is abundant evidence on record that the Chairman of that Board worked so efficiently as to attract the admiration of all. Sufficient opportunities were given to the detenus to place their cases before the Board, and members of the Board were empowered to put questions to the detenus. Therefore, their civil liberties were not at all in danger. When persons of the rank of High Court Judges sit on the Advisory Boards, there should be no apprehension about justice not being done. During times of emergency, we know that in a country like England, where they have the Magna Carta—one of the jewels which is cherished by the judges and lawyers from time immemorial—even *habeas corpus* Acts are suspended. Necessity knows no law and the security of the Ship of the State must be kept on an even keel. I yield to none in my love for civil liberties. At the same time, civil liberties have their limitations.

Our newly won freedom cannot be jeopardised by those who want to commit intentional sabotage. Such people are not entitled to any consideration at the hands of the State. We do not intend to ride rough-shod over their rights, because sufficient safeguards have been provided in the Bill. If they are guilty they will be detained; if they are innocent, they will be released. With these observations, Sir, I accord once more my full support to the provisions of the Bill.

Shri Tirumala Rao: *rose—*

Shri Sidhva (Madhya Pradesh): On this side nobody has spoken.

Mr. Speaker: Order, order. It is the Government which is sitting on this side. I find that the discussion has gone on pretty long, and no new points are coming up. I really do not see the necessity for a further discussion of the Bill. All the possible points have been brought out and there is practically a repetition of the same arguments. However, I do not want hon. Members to carry the impression that I am stifling the discussion. They will avoid repetition, and state only the points. Shri Tirumala Rao.

Shri Tirumala Rao: I am grateful to you for having called me, Sir, and I will take only a few minutes to express my viewpoint on the Bill. I was very much disappointed to see my hon. friend Shri R. K. Chaudhuri attacking this Bill. He called this Bill a "Black Bill". I feel that the country is fortunate enough in not having Shri R. K. Chaudhuri, under the present circumstances, in charge of the affairs of the country. I am quite sure our Prime Minister and Deputy Prime Minister can be expected to handle the affairs of the country properly. Coming as Shri Chaudhuri does from the far eastern corner of India, which has been the hotbed of intrigue and trouble all along and which has given the greatest amount of headache to the Central Government with regard to our security, I am surprised to see that he is not able to appreciate the salient features of this Bill. Hailing from the southern Presidency, from the heart of Andhra Desha, which has been the scene of Communist intrigue and bloody, daylight murders of innocent women and children by lawless political adventurers, I found it necessary to stand up here and pay a tribute to our Deputy Prime Minister who is capable of taking charge of this country's affairs and steering it through all its difficulties. I was a personal participant in the discussions that took place on this clause in this Constituent Assembly. Every viewpoint was pressed on that occasion, and with the fullest knowledge of the events in the country and absolute relevancy to the context, all these clauses were considered and incorporated in the Constitution. Therefore, today, when it falls to the responsibility of the Central Government to see that the spirit and also the letter of the Constitution is observed in the daily administration of the country, all of us are sure that these rights are being observed in this Bill in consonance with the safety of the country. Here are the relevant clauses that appear in this Bill, which refer to the defence of India, relations of India with foreign countries, the security of the country and the maintenance of public order. We should not forget that we have got both internal and external enemies, who are casting a green eye on our newly won freedom.

The Minister of Labour (Shri Jagjivan Ram): Green eye? Not blue eye?

Shri Tirumala Rao: Jaundiced eye, I mean. It turns green on account of envy.

We have been seeing that many of the groups and parties in this country, who were far away during the freedom movement, have suddenly developed a great amount of patriotism for our country. They have started intriguing for power. They think that this newly won freedom, this newly won Swaraj, can be easily captured by some insurrectionary movement within the country by some slogan or other. We have been seeing that band of friends called "Communists" who owe their political allegiance to a far off country. They also see a fruitful time for intrigue and for the creation of mass troubles, with a view to capturing power. With regard to external troubles, our erstwhile friends, the Pakistanis, are still living in a fool's paradise by thinking that they can create trouble and somehow grab more land than they have already got.

If we look at the situation as it exists today in East Bengal and the slogans and the widespread anti-Indian and anti-Hindu progaganda that is being carried on by the Pakistan Press and Pakistan Radio, we can immediately realise how our borders have to be guarded very carefully against these intriguers. Even the Foreign Minister of Pakistan could not resist putting out a canard that his life is in danger. He allowed that lie to go round the whole world, giving the impression that some Hindus were intriguing against the precious life of this great man! After the mischief has been done, he comes out with a denial that he is not aware of any such thing. That is the usual tactics of our Pakistani friends. They think that this falsity, calumny and propaganda will pay them in the end. But they will not pay them, because India is strong enough and powerful enough not only to ward herself off from external danger, but also to see that internal security is maintained and our ill-meaning friends are taught a lesson. Our Government is powerful enough to see that law and order is maintained and that the large mass of people who inhabit this country are able to pursue their peaceful avocations undisturbed by a few murderous adventurers. After all, there are only about 3000 to 4000 people today under detention. For ensuring the security of 33 crores of people, I ask you, is this number too much? In view of the disturbed conditions and the persistent plot that is being carried on by—a friend suggests "gangsters",—I would say by these people, this Bill is absolutely necessary. From the Telugu area, which you know is one of the most disturbed areas on the Hyderabad border, even today, even yesterday, even four days ago, we received news that Communists are going about, armed with sten guns and in military uniforms, in broad daylight and murder people. They have been carrying on their depredations into the open country, even in the delta area some ten to fifteen miles from a big place like Vijayawada. Therefore, it is necessary that Government should enjoy the fullest confidence of the Legislature. I know what civil liberty means. But we should not allow criminals to have civil liberty. That is what we should remember. We cannot allow them, in the name of civil liberty, to play havoc.

[PANDIT THAKUR DAS BHARGAVA *in the Chair*]

I had occasion in another place to draw the attention of our friends in regard to this matter. Government servants, retired Judges of the High Court and other such people go about the country, using the most intemperate and violent language against the Government of the day, telling the people that their civil liberties are at stake. It is the responsibility of this, therefore, to see that our newly won independence is not jeopardized by these mischievous elements. We should strengthen the hands of our Deputy Prime Minister, our Prime Minister and our Cabinet and see that their services result in fruitful endeavour and glorious prosperity for the future of this country.

Pandit Balkrishna Sharma: I am really sorry that some words escaped me during an interruption when Mr. Chaudhury was on his legs which gave Mr. Chaudhury some pain and I have no hesitation in expressing my regret to Mr. Chaudhury and offering him my apology. As a matter of fact when he began talking rather tall and as I thought, through his hat, which he has not, by calling this Bill a black Bill, then I somewhat lost my patience. Imagine the condition that he put for not calling it a black Bill. The condition was that as this Bill was sponsored by our Cabinet and as the hon. the Deputy Prime Minister is in charge of it therefore he would not deign to call it a black Bill. It was that sort of mentality that upset me and I thought a man of his experience should not have offered such intemperate criticism in regard to this Bill. For that reason alone as I said I was a little put out and that remark escaped me for which I am very sorry.

4 P.M.

[Pandit Balkrishna Sharma]

So far as this Bill is concerned, I am grateful to my friend Pandit Mahavir Tyagi and to my another friend Shri Ajit Pershad Jain, for whose forensic abilities I have very great respect, for pointing out certain lacunae in this Bill and for also drawing the attention of the House that some of the clauses of this Bill are not in consonance with the provisions of the Constitution. It was pointed out by both these friends that clause 11 of this Bill is not in conformity with Article 22 of the Constitution. Their contention was that this clause 11 does not put any time-limit on the detention of people when that detention is endorsed by the Advisory Board and according to them this is against the spirit as also the letter of Article 22 of the Constitution. It was pointed out that clause (4) of Article 22 of the Constitution lays it down that "No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless an Advisory Board consisting of persons etc. etc. reported that there is in its opinion sufficient cause for such detention."

And then the proviso says:

"Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub clause (b) of clause (7)."

My submission is that this clause and this proviso did not militate against clause 11 of the Bill. Clause 4 of Article 22 sub-clause (a) authorises the detention of a man for an indefinite period, *i.e.*, the Constitution in itself gives the right to Government to detain a man if his detention is also at the same time endorsed by the Advisory Board for an indefinite period. Having given that right to Government it was realised that that indefinite right given here should not be of such a nature as would deprive Parliament to prescribe any time-limit and therefore this proviso has been added, thereby authorising Parliament if it so desires, to provide for a time-limit otherwise of course, the power is there. Therefore this proviso is only in the nature of a limitation of the power given to Government as also in the nature of authorising Parliament to fix a time-limit and therefore it cannot be said that this proviso in any way militates against clause 11 because clause 11 also in conformity with sub-clause (a) of clause (4) of Article 22 gives power for detention for an indefinite period to Government. Therefore I beg to submit that when they were interpreting this clause in the manner in which they did, they were not seeing the very obvious point involved in it that this proviso does not make it obligatory on the part of Parliament to enact a law limiting detention period nor does it in any way take away the power which the Constitution itself has given to Government for an indefinite period of detention.

Then again it was pointed out during the discussion that clause (7) of Article 22 of the Constitution was not kept in mind when this Bill was framed. My submission is that it is not so, that the criticism that has been directed against the Bill on this ground is not sound. If you will see clause 12 of this Bill you will find that both the things which clause (7) of Article 22 wants Parliament to do have been provided for. It provides that any person detained in any of the following classes of cases or under any of the following circumstances may be detained without obtaining the opinion of an Advisory Board for a period longer than three months—and mark it here, here is the thing where maximum period has been provided for—but not exceeding one year from the date of detention order, namely, where such person has been detained with a view to preventing him from acting in any manner prejudicial to:

"(a) the defence of India, relations of India with foreign powers or the security of India; or

(b) the security of a State or the maintenance of public order."

Here the Bill itself provides for the maximum period of detention and also provides for the circumstances under which and the classes in which a person may be detained for a period longer than three months as provided in clause (7) of Article 22. Therefore, on this ground also, the criticism that has been levelled at the various clauses of the Bill does not seem to me to hold water.

Another thing which was brought out by some of my friends, Dr. Panjabrao Deshmukh in particular, that the scope of this Bill must be circumscribed, seems to me to be not only impracticable, but harmful. None knows better than my friend Dr. Panjabrao Deshmukh the conditions which prevail in various provinces in this country. It will be inadvisable, to say the least, that the scope of this Bill should be limited to certain geographical entities of our Indian Union. We have got troubles in Bengal; in Assam there is trouble; as my friend Mr. Tirumala Rao pointed out, in the Madras State trouble is brewing; in the Hyderabad State there is trouble. Under these circumstances, it will not be advisable, practicable, or feasible to limit the scope of a measure like this. My grouse against the Government is that they have brought this measure of a limited nature applicable only for a limited period. Therefore, along with my friend Shri Masani, I make a special request to the hon. the Deputy Prime Minister to bring in another measure by which a legislation of a permanent nature might be put on our Statute Book.

Much has been said about civil liberties. But, we must not forget what the Father of the Nation said about civil liberties. When some people approached him and talked to him about civil liberties, he said, "But remember, civil liberties are not criminal licence". Here, in our country, there is a group of people who have taken the law into their own hands, who do not respect your law, who do not regard your order of society as desirable and therefore are prepared to sabotage the State and to subvert the society and all the plans that you make for well ordered social progress. Therefore, my submission is that on that ground we should not hesitate to place this Bill on the Statute Book at least for one year. I wish it could be a permanent measure, because, the times are difficult and I do not think within this year the troubles of the hon. the Deputy Prime Minister will end. I therefore submit the advisability of bringing in a legislation of a permanent nature on the lines on which the present legislation is based.

Some hon. Members: Closure, closure.

Some hon. Members: No, Sir.

Mr. Chairman: So many persons are anxious to speak; there are others who want the closure to be put. I will allow only one more speaker. Mr. Ramnath Goenka.

Shri Sidhva: Nobody has been called from this side.

Mr. Chairman: I have already called one gentleman on this side.

Shri Goenka (Madras): I rise to support the Bill with all the emphasis I can command. It is unnecessary for me to go into the question whether the Constitution provides for a particular measure or not. That would be for the courts to decide. So far as I am concerned, I have to go into the question whether the exigency of the situation demands a particular measure. I say that the exigencies of the present situation demand this particular measure and the earlier we enact it, the better. I am sure by this evening we will have this measure put on the Statute Book.

But, then, the point arises—and, in fact, some of my friends have been saying it—that the Bill may be *ultra virès* in certain respects and may not be *ultra vires* in certain other respects. A previous ruling of the Chair has been

[Shri Goenka]

that so far as this House is concerned, it is not concerned with the question whether a particular enactment is *ultra vires* or not and that it will be for the courts to decide whether it is so or not, and that so far as we are concerned, we have to meet the exigencies of the situation. This legislation is in a way a hasty legislation but the exigencies of the situation demand it.

I have only one point to make: I will not take very much of the time of the House. So far as this Bill is concerned, under clause 3, there are three categories: (i) defence of India, relations of India with foreign powers, or the security of India; (ii) the security of the State or the maintenance of public order; and (iii) the maintenance of supplies and services essential to the community. I find that the third category only comes under the supervision of the Advisory Board and except to the extent of maintenance of supplies and services essential to the community, all other cases cannot go before the Advisory Board as the Bill now is before us. So far as defence of India is concerned, there can be no two opinions that we want this clause. But, I do not know why the words, "relations of India with foreign powers", have come into it. So far as relations with foreign powers are concerned, I do not know why it is necessary to enact just at present. In fact, the relations of the Government with foreign powers are very friendly and where they are not friendly, it will be perfectly legitimate for the people even to comment unpalatably upon the activities of foreign powers. This Bill takes away the right of the effected person, the person who has been detained, to go even before the Advisory Board if he adversely comments upon the relations of India with foreign powers. You will see that in clause 12 of the Bill, along with the defence of India, relations of India with foreign powers, have been included. Unless we were wholly transferring entry 9 of List I of the Constitution which deals with "preventitve detention for reasons connected with defence, foreign affairs, or the security of India", I think the inclusion of foreign affairs in clause 12 is absolutely unnecessary. What I would like to impress upon the hon. the Home Minister is this. So far as the relations of India with foreign powers are concerned, this should not find a place in clause 12 of this Bill; because, for commenting upon a matter which deals with the relations of India with foreign powers, you are not only liable to be detained, but you lose your right of submission before an Advisory Board. I can understand a person, under certain circumstances, being detained for commenting or writing or speaking or doing any other thing which embitters the relations of the Government of India with any other foreign power. But, once he is detained, he must be given the right to submit his case before the Advisory Board. The Advisory Board must examine his case and then decide whether he is liable to be detained or not. Here is a blanket order in clause 12 that if you do anything which would embitter the relations of India with any foreign State, you will not only be detained, but you will be shut out even from submitting your case before the Advisory Board. This is really a hard case and I submit no emergency has arisen in regard to this. I am sure that this very important aspect of the question will be borne in mind by the hon. the Home Minister and when, as I am sure he will, he revises this Bill in due course, he will take this matter into consideration and see that so far as the relations of India with foreign powers are concerned, it is removed from clause 12. If necessary, it may be kept in clause 3 of the Bill, but certainly not in clause 12 because it deprives even the right of submitting the case before the Advisory Board. Sir, you will appreciate that, so far as the Constitution is concerned, it provides that only in very very grave emergencies you can prevent the Advisory Board coming into play. In every other case you have to put the case before the Advisory Board and it will take a decision whether a man has to be detained or not. It is only in exceptional circumstances that the right is given to the executive to decide whether the

matter should go before the Advisory Board or not. So long as the communist menace is there in this country, there is not a soul in this country, man, woman or child who will not support the proposition that the earlier it is nipped in the bud the better.

Now I would only draw your attention to what I may call the Hitler menace and there are also Goebbels who carry on propaganda against India. There are Hitlers and Goebbelses next door to you. In reply to that propaganda if somebody here says something in regard to the atrocities committed next door, those Hitlers and Goebbelses will say: "We do not like this hampering the relations between our two countries. See what your press says about us". In that situation, I would like to see that the press of this country and the people of this country—I do not differentiate between them—are not robbed of their right to speak out their mind in regard to foreign relations of India as long as such views do not endanger the security of this country. Even when a person crosses the border and commits an offence, he should be detained only after getting the opinion of the Advisory Board.

✓**Shri Syamanandan Sahaya** (Bihar): Before the hon. the Deputy Prime-Minister replies to the debate, I want to mention one point for clarification. There is a provision that an order made by a State Government can be revoked by the Central Government. I do not understand the implication of this, because, after all, the State Governments are run by one party and it is possible for the Central Government to get the State Governments to revise their order. That being so, is it necessary to have this power for the Centre, to revoke an order of the State Governments? I refer to sub-clause (b) of clause 13.

Sardar Patel: Sir, I am glad that the emergency legislation which I had to bring before this House has been generally well received and the emergency and the importance of the Bill have been recognised and have met with the general support of this House. I am also glad that the Bill has met with careful criticism, because when the liberty of any citizen is sought to be taken away by a Bill, it should be carefully scrutinised and the necessity for it should be proved beyond doubt.

One of the hon. Members of the House said: 'I support this Bill with a heavy heart.' While supporting the Bill with a heavy heart he made some criticisms and one is left in doubt as to whether his criticisms were made with a light heart or a heavy heart. He read a telegram which he had received from his State. I do not know whether he appreciated the seriousness of the contents of that telegram from the State from which he comes. Being largely engaged in Parliamentary activities far away from his State, he is probably not aware of the conditions there and the situation there. But, if in any State there is necessity for this sort of legislation, it is in the State from which he comes. As I said, he is probably not acquainted with the situation there, as he is far away here engaged in more important activities. I have sympathy for the people who are in charge of the administration of law and order in that State. He says: 'What is this law and order? It is the business of the Police to manintain law and order'. I consider it a very light-hearted remark. It is the business of the Police to maintain law and order, but it is the business of this House to see that the agency through which we have to keep law and order is not put to such a strain that it would break down completely. It is not a pleasant task to bring in a Bill of this kind in this House immediately after freedom and the Republican Constitution has been adopted.

Now, perhaps Members are aware that I know more than anybody else what the mental attitude of a detenu would be when he is arrested in the middle of the night in his sick bed and again when he is in detention when many of

[Sardar Patel]

his dear relations die in this country or outside this country and when their dead bodies are brought back and he is not released even for cremation by the imposition of such conditions that the detenu declines for the honour of his country to go out. So, when this legislation is brought in, it is not done with a light heart. It is done with a heavy heart. When responsibility is placed on one to keep law and order and safeguard the liberties of millions of people, for the protection of that liberty and for the fulfilment of that duty one has to take actions which are most detestable. But to call this measure as a black Bill is I consider a very light-hearted comment to make. There are occasions on which there may be room for humour, jokes and laughter. But I assure this House that I have passed two sleepless nights when I was asked to take up this measure. The States have sent frantic messages and I have sympathy for them. When four hundred or five hundred people are let loose in a State, the problem of maintaining law and order there becomes very difficult. The whole of the city of Calcutta is on strike. Why? Because some people distributed leaflets on what is happening in East Bengal. Who is to support this Government to keep law and order there? Am I to allow hundreds of detenus to be let loose in the city of Calcutta day after tomorrow?

Now, who are they? I will give you one or two quotations from the pamphlet which has been issued by the Home Ministry of the Government of India which you probably must have read, but such things are easily forgotten. It says:

"Instructions issued to the members of the Party are:

Observe hartal. Strike in factories. Take out processions. Disobey orders under Section 144. Stop the movement of the Police and Military by blockading the roads. Set fire to Government buses and British-owned tramcars. Set fire to the whole of Calcutta and the whole of Bengal".

While for other places it says:

"Assault the reactionary Congress leaders severely. Set fire to Congress offices, the Centres of reaction and black-marketing. Attack the houses of the Ministers. Create chaos there. Attack the jail gates and rescue our brethren who have been weakened owing to the loss of blood"

I am only reading these two extracts. I do not want to take more time of the House. I want you to read the whole pamphlet carefully. After this pamphlet was issued, you must have noticed that there has been a regular conspiracy and instructions have gone round all over that they should simultaneously create trouble in all jails and try to get out. Some of my friends ask me as to what will happen about these detenus in jail when the Act expires. Even before the period of detention expires, they know how to break open the jails and get away. They do not want any advice from you. They know how to take care of themselves. Let us take care of the people, of the millions of people, who are not able to take care of themselves. Therefore I have brought this measure before the House. This is in order to help those people who are in charge of preserving the liberty of the millions of people in this country in the various States where, through no fault of theirs, these difficulties have arisen. Now the sudden disclosure of constitutional difficulties brought to our notice made it necessary for us to come here at once. Officers from the States have come here with this request from the Ministers to help them in some way immediately. Otherwise they would find themselves in difficulties and they would not be able to preserve law and order. It is no use saying the Police is there to preserve law and order. We are here to preserve law and order in the whole country and if we fail in our duty to help those people, it will be our fault, not their fault. Therefore this measure has been brought before the House.

Mr. Kamath talked of some criticism of the High Court of Bombay against the Government of Bombay in regard to some detention. I do not know what

is the relevancy of that criticism here. I would have answered him if I had seen the relevancy of the case. I have the greatest respect for the judiciary of this land which is the protector of the liberty of all of us and therefore we are bound to support and respect their criticism. It is no use quoting at random, vague criticisms which are irrelevant absolutely to the passing of this Bill. Therefore I am not able to answer him, but I assure this House that any criticism from any judicial quarter will have the greatest weight given to it by the States as well as by the Central Government.

Some point has been made about the wording in some of the clauses about detention which would lead to embitterment of relations with foreign countries. We have taken the wording from the categories of cases for which detention can be made from the Constitution itself and we have divided it into two parts. One is the category where these detenus can be kept for three months and after that they can be kept for a further period if the Advisory Board agrees. In the second category we have taken others. As has been pointed out by my friend, Mr. Masani, this Bill is brought in to meet an emergency. It requires to be closely examined whether a better substitute of a more or less permanent nature based on specific principles can be brought in or not. I do not know the real position of the country about whose legislation based on principles he made some quotations. Our country is a huge country. The reference that he made was to countries where perhaps there are not so many castes, creeds, religions, communities and so many parties. You must judge this measure not from your past experience of detention of yourselves. You must see that all parties who want to go to the polls have freedom. This is a democratic country now and any party that wants to take advantage of democratic institutions or democratic organisations or to come into the Government by democratic methods, is quite free, but it will be an evil day if this Government allows the democratic freedom to go to the polls to people who want to destroy democracy by violence and disruption. We will not do it. Take the Communist Party in England. What are they doing? They fought at the polls. They can do so here. Do the British Communists take to violence of this nature? Do they remove rails? Do they dislocate communications? Do they set fire to public property? Do they attack the warders in jails and kill them? Do they attack the police? Here even Ministers and hon. Members are not beyond their contemplation or their range. When you say that civil liberty should not be interfered with, I will endorse it. I appreciate what is civil liberty, but I hate criminal liberty to commit criminal violence against innocent people, and therefore I am taking every precaution to guard the liberty of innocent people. That is my sacred duty and it is yours to share that duty. Therefore I have brought in this measure.

My friend, Dr. Punjabrao Deshmukh, says that we should localise this trouble. It is not localising the trouble. The solution that he suggests is that all persons who have gone underground, all detenus and all those who may be released and may go underground should be localised and that we should provide them with some colony or some province where they can freely conspire and commit these acts.

[MR. SPEAKER *in the Chair*]

That is not my task. I cannot do that. If he thought that Berar might be the venue for that, we shall consider that question but his life will be not one day's purchase. So we have provided this after careful consideration. This is a measure which is really a concentration of the provisions of all the security acts which are functioning in the States. I have quoted in my speech while moving this motion that these acts, security measures are attacked on all sides because they are not in consonance with the Constitution that we have passed and therefore, we must put it in line with

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the Constitution and remove the defects. The other alternative is to get the President's order to declare an emergency in India. Can we do that? It would be very bad, the psychological effect would be bad and it is not necessary at all. Therefore, this is the minimum evil which is necessary for the protection of liberty of millions of people and I am glad that you have supported this measure.

Mr. Speaker: The question is:

"That the Bill to provide for preventive detention in certain cases and matters connected therewith, be taken into consideration."

The motion was adopted.

Mr. Speaker: The question is:

"That clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

Shri Kamath: I will move the four amendments in my name.

Mr. Speaker: The first two may be left to the draftsman as they seem to be more a substitution of article 'a' and 'the'.

Shri Kamath: My amendments are intended to bring the clause into line with the Constitution as it is before us and also with the Statement of Objects and Reasons in the Bill.

Mr. Speaker: It may be left to the draftsman.

Shri Kamath: I do not press it.

Mr. Speaker: He may move the other two amendments.

Shri Kamath: I beg to move:

(i) "That in sub-clause (2) of clause 3, the words 'or Sub-Divisional Magistrate' be omitted."

(ii) "That in sub-clause (3) of clause 3, the words 'Sub-Divisional Magistrate' be omitted."

Before lunch I referred briefly to the necessity as to why this power should be vested only in District Magistrates and not in subordinate Magistrates. I think a measure of this nature which has been described even by the hon. Home Minister as an emergency legislation must have adequate safeguards against the encroachment of the liberty by the executive. I do not for a moment contend that the liberty should not be curtailed or even completely abrogated if necessary, but the point that I am making out all the time is that we must provide adequate safeguards against the abuse of powers by the executive. I for one feel that this power that is contemplated here in this clause should be vested only in the District Magistrates and not in subordinate Magistrates.

Mr. Speaker: Amendments moved:

(i) "That in sub-clause (2) of clause 3, the words 'or Sub-Divisional Magistrate' be omitted."

(ii) "That in sub clause (3) of clause 3, the words 'Sub-Divisional Magistrate" be omitted."

Sardar Patel: I do not accept the amendments because there are many places where the Sub-Divisional Magistrates, for instance in Madras and other

places, are in full charge of the districts. There are no District Magistrates there and these Sub-Divisional Magistrates after detention of persons may have to report to the Government. Therefore, there is no reason for accepting the amendments.

Shri Kamath: May I ask whether there are any Sub-Divisions anywhere in India where the Sub-Divisional Magistrate does not exercise the powers of an Additional District Magistrate when he holds independent charge of a Sub-Division. So far as I know.....

Mr. Speaker: The hon. Member made that point already in the morning. The question is:

(i) "That in sub-clause (2) of clause 3, the words 'or Sub-Divisional Magistrate' be omitted."

(ii) "That in sub-clause (3) of clause 3, the words 'Sub-Divisional Magistrate' be omitted."

The motion was negatived.

Mr. Speaker: The question is:

"That clause 3 stand part of the Bill."

The motion was adopted.

Clause 3 was added to the Bill.

Clauses 4 to 7 were added to the Bill.

Shri Kamath: I beg to move:

"That in sub-clause (1) of clause 8, the words 'whenever necessary' be omitted."

The sub-clause reads as follows:

"The Central Government and each State Government shall, whenever necessary, constitute one or more Advisory Boards for the purposes of this Act."

When we mention specifically in the sub-clause that we are setting up the Advisory Boards for the purpose of this Act, it is wholly unnecessary, in my humble judgment, to add the words "whenever necessary".

Shri T. T. Krishnamachari: If there are no people in detention?

Shri Kamath: The point I was making was that the sub-clause makes it clear that the Board will be appointed for the purpose of the Act. If the purpose envisaged is not going to be fulfilled by the Board, why say "whenever necessary"?

My second amendment is more substantial than the first. I beg to move:

"That in sub-clause (2) of clause 8, for the words 'two persons' the words 'three persons' be substituted."

If we want to constitute the Advisory Board in such a manner that we wish to be fair and just not merely to the detenu but also to the opinion and the report submitted by the Advisory Board we must see to it that such a contingency will not arise wherein there may be disagreement between *two* members of the Board. As it is the Board will consist of two members. The Attorney-General has told us that by opinion is meant the opinion of the entire Advisory Board. I hope that in every case the members will submit a unanimous report but you can never tell what may happen in human affairs and, it is always right for wisemen to provide for contingencies when difference of opinion may arise. Even in the Constituent Assembly the members of the Drafting Committee were not always at one on various matters. Dr. Ambedkar is

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smiling approvingly as if he agrees with what I said. I suggest that it would be more proper and more in consonance with the spirit of the Constitution and the particular Article under reference, Article 22, if the Advisory Board were constituted of at least three persons. (*Interruption*) My friend Mr. B. Das asks who will have the casting vote. The casting vote at present will be with the Government. That is a moot point. If the Government has the last word in the matter it is farcical to have an Advisory Board where its opinion will not be mandatory or obligatory. If unanimity of opinion is there, well and good but if it is not, you must provide for the majority opinion of the Board to be binding upon the Government.

Mr. Speaker: Amendment moved:

(i) "That in sub-clause (1) of clause 8, the words 'whenever necessary' be omitted."

(ii) "That in sub-clause (2) of clause 8, for the words 'two persons' the words 'three persons' be substituted."

Shri Tirumala Rao: In the explanation given by the Attorney-General he said that when there is difference of opinion between the two judges their judgment cannot be taken to have approved the detention.

Sardar Patel: The order automatically falls according to the Constitution.

Shri Tirumala Rao: In effect the Board has not functioned.

Sardar Patel: The Board has functioned.

Mr. Speaker: The point is clear. In case the two judges do not agree, there is no concurrence with the proposal of the Government and therefore automatically the order will fall through. It will not be confirmed.

Shri Tirumala Rao: Therefore there is danger of the purpose of the Government being defeated at times. My suggestion is either it should be one or three judges. My suggestion may or may not be accepted.

Sardar Patel: The removal of the words "whenever necessary" would mean that even if there are no detenus the Board should be formed. On the contrary an amendment is necessary only when necessary and this amendment is absolutely unnecessary and therefore I oppose it.

As regards the other amendment, as the Attorney-General explained there is no necessity for expanding the Advisory Board. Because if the Board is formed of two members and if the two disagree, then there is no basis on which the order can stand according to the Constitution itself. Therefore automatically the order falls. So what the hon. Member wants is again unnecessary. It will put the Government to the additional expense on the third member and put the detenu to the trouble of convincing three persons instead of two.

Shri Kamath: I beg leave to withdraw the amendments.

The amendments were by leave withdrawn.

Shri Venkataraman (Madras): There are already some Advisory Boards functioning in Madras. Many of these Boards consist of five persons. A judge presides over it, the Advocate General, the Public Prosecutor and two non-officials are members of the Board. If the statute provides that every such Board shall consist of only two persons the probabilities are that the non-officials will be eliminated and it will rouse criticism in our province on the ground that what had been vouchsafed under the old Act has been taken away after the Republic. I am only submitting this. I suggest that if it is acceptable to the hon. Minister the words 'not less than two persons' may be used in Sub-clause (2) of clause 8.

Sardar Patel: What is proposed is consistent with the Constitution. There will be two members, one will be an official and the other a non-official.

Mr. Speaker: The question is:

"That clause 8 stand part of the Bill."

The motion was adopted.

Clause 8 was added to the Bill.

Sardar Patel: I beg to move:

"That in clause 9, for the words 'date of the order' the words 'date of detention under the order' be substituted."

Mr. Speaker: The question is:

"That in clause 9, for the words 'date of the order' the words 'date of detention under the order' be substituted."

The motion was adopted.

Mr. Speaker: The question is:

"That clause 9, as amended, stand part of the Bill."

The motion was adopted.

Clause 9, as amended, was added to the Bill.

Sardar Patel: Sir, this is only a verbal amendment. I beg to move:

"That in sub-clause (1) of clause 10, for the words 'date of the detention order' the words 'date of detention under the detention order' be substituted."

Mr. Speaker: The question is:

"That in sub-clause (1) of clause 10, for the words 'date of the detention order' the words 'date of detention under the detention order' be substituted."

The motion was adopted.

Shri Venkataraman: I would suggest that the words "legal practitioner" may be used as it may be consonant with its use by lawyers. 'Legal representative' to us lawyers would mean a person who is an heir or executor or one who deals with the estate of a deceased person, etc. I am only making a suggestion and I am not moving an amendment.

5 P.M.

Sardar Patel: The words "legal representative" are all right.

Mr. Speaker: Does the hon. Member press his amendment?

Shri Venkataraman: No, Sir.

Shri Kamath: I beg to move:

"That in sub-clause (1) of clause 10, the words 'if necessary' be omitted."

Here I venture to hope that the Home Minister will agree with me that these words "if necessary" are really unnecessary, because if the hon. Home Minister and the House will carefully read this clause, they will see that the phrase "if necessary" has been repeated in this clause which reads:

"The Advisory Board shall, after considering the materials placed before it and, *if necessary*, after calling for such further information from the Central Government or the State Government or from the person concerned, *as it may deem necessary*, submit its report....."

I do not know what the force of these two "necessaries"—"if necessary" and "as it may deem necessary"—is. Either it calls for information, whatever information is necessary, or it does not. If the Advisory Board thinks that in its

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opinion some further information is necessary, it will call for it. Therefore the two "necessaries"—"if necessary" and "as it may deem necessary"—as prefix and suffix to this clause regarding the calling of further information are, in my humble judgment, wholly unnecessary and could be reduced to one "necessary". If the words "if necessary" are omitted, the clause will read thus:

"The Advisory Board shall, after considering the materials placed before it and after calling for such further information from the Central Government or the State Government or from the person concerned, as it may deem necessary, submit its report....."

The phrase "as it may deem necessary" is quite enough to bring out the implication of the clause without the preceding "if necessary".

Sardar Patel: It is necessary to understand why this amendment is unnecessary, because the first "if necessary" goes with whether that information should be called for or not and the second is with regard to the quality of the information. Therefore, both the "necessaries" are necessary and the amendment is unnecessary.

Mr. Speaker: Is it clear to the hon. Member and does he wish to press his amendment?

Shri Kamath: No, Sir, I do not want to press it. I shall move my other amendment to clause 10. I beg to move:

"That in sub-clause (3) of clause 10, the words beginning with the words 'Nothing in this section' and ending with the words 'the Advisory Board, and' be omitted."

If this amendment were accepted by the House, the sub-clause would read as follows:

"The proceedings of the Advisory Board and its report, excepting that part of the report in which the opinion of the Advisory Board is specified, shall be confidential."

The first part relates to the appearance of the detenu in person or through his legal representative before the Advisory Board. I am at one with the Home Minister that persons who are out to create disorder and chaos in the country should be suppressed. But what I have been pleading before this House today is that persons who are deprived of their liberty and detained for reasons connected with the security of the State, or otherwise, and detained rightly too, should not be deprived of the right of placing their case before the Advisory Board which Government itself is going to constitute. Therefore the provision which seeks to deprive the detenu of the right to appear before the Board either in person or through his counsel should not be withheld, because, as the Bill stands, the Advisory Board will have before it only the grounds of the detention as made out by Government and the representation of the detenu. If the Advisory Board were also in a position to examine the detenu, if necessary, it would be helpful to the Board; I therefore think that that right should not be withheld from the detenu.

Mr. Speaker: Amendment moved:

"That in sub-clause (3) of clause 10, the words beginning with the words 'Nothing in this section' and ending with the words 'the Advisory Board, and' be omitted."

Sardar Patel: The proceedings of the Advisory Board are not supposed to be judicial or semi-judicial proceedings. The detenu himself knows what has happened. But my hon. friend hardly knows that the publication of these proceedings would be of a most dangerous character and give rise to a most dangerous propaganda. It is likely to disclose the source of information or, by inference, the source of information is likely to be known. My hon. friend does not know

how many informants have been killed during recent months. Therefore the sacred nature of the proceedings is its secrecy and it should not be disturbed. Sir, I oppose the amendment.

Mr. Speaker: The question is:

"That in sub-clause (3) of clause 10, the words beginning with the words 'Nothing in this section' and ending with the words 'the Advisory Board, and' be omitted."

The motion was negatived.

Shri Sonavane (Bombay): First of all I would like to place my views before this House as to why I am moving this amendment, and if the amendment is acceptable to the hon. Minister it may be put to vote. Otherwise I would beg leave of the House to withdraw it.

An Hon. Member: What is the amendment?

Shri Sonavane: I beg to move:

"That for sub-clause (3) of clause 10, the following be substituted:

'(3) The report and the proceedings of the Advisory Board, excepting that part of the report in which the opinion of the Advisory Board is specified, shall be confidential'."

An Hon. Member: That has been rejected.

Mr. Speaker: I shall put it in another form so that it may be consistent with the decision just taken.

Shri Sonavane: The effect of this will be that the proceedings and the report of the Advisory Board will be considered as confidential and at the same time the presence of the detenu and his legal representative will be allowed.

Mr. Speaker: I am not going to put the amendment in that form. If he wishes to put it in that form I cannot allow it. The only form in which his amendment would come in will be consistent with the decision of the House, that in place of the words "the proceedings of the Advisory Board and its report, excepting that part of the report in which the opinion of the Advisory Board is specified, shall be confidential" the words suggested by him might be substituted. The amendment will then be a verbal one.

Sardar Patel: Sir, he said that if I do not accept the amendment, he will withdraw it. So I would request him to withdraw it.

Shri Sonavane: I withdraw it.

Mr. Speaker: There is no question of withdrawing it—it has not been placed before the House.

The question is:

"That clause 10, as amended, stand part of the Bill."

The motion was adopted.

Clause 10, *as amended, was added to the Bill.*

Shri Tyagi: I have no amendment to move but I would like to use this opportunity for emphasising the suggestion made in Mr. Ajit Prasad Jain's amendment. I think only with that idea that the punishment should not extend beyond one year, will this clause be complete. Otherwise I, as a layman, am afraid that the whole thing might become *ultra vires*. The maximum limit must be fixed here.

Mr. Speaker: This point has been disposed of.

Shri Tyagi: Still you can consider it. It will not spoil the meaning; on the other hand you also mean it. Why not add these words so that the clause will be in consonance with the Constitution.

Sardar Patel: At one time Mr. Tyagi wanted to have some lessons in law from Dr. Ambedkar. He got them from the Attorney-General and I do not wish to interfere in that.

Mr. Speaker: The question is:

"That clause 11 stand part of the Bill."

The motion was adopted.

Clause 11 *was added to the Bill.*

Shri Kamath: I beg to move:

"That after clause 11, the following new clause be inserted:

'11A. In any case where the Advisory Board has reported that there is in its opinion no sufficient cause for the detention of the person concerned, the Central Government or the State Government, as the case may be, shall revoke the detention order and release the person concerned forthwith.' "

This is in conformity with the relevant clause of the Constitution, clause (4) of Article 22, because that clause (4) of Article 22 is explicit on this point that no law.....

Mr. Speaker: I have a doubt over this matter. Is this really permissible in view of the House having adopted clause 11?

Sardar Patel: How can it be?

Mr. Speaker: The effect of clause 11 is practically exactly the same as what the hon. Member wants to have by this amendment. The House has accepted that clause. Now, what is the point that the hon. Member wants to make?

Shri Kamath: May I make out my point? Clause 11 which the House has accepted already relates to cases where the Advisory Board has reported that in its opinion there is sufficient cause for detention. This new clause 11A refers to cases where the Board reports or has reported that there is no sufficient cause for such detention. In such a case, the point of this amendment is that the person should be released forthwith.

Mr. Speaker: The point to which I am inviting the hon. Member's attention is that this question has been explained previously in the debate by the Attorney-General as also by the Home Minister. The moment the Advisory Board comes to the conclusion that there is not sufficient cause, the order automatically falls through under clause 11. Nothing remains to be done.

Sardar Patel: That is clear under the Constitution.

Shri Kamath: The Constitution says something about clause 11 also that unless the Board recommends.....

Mr. Speaker: I am sorry I am not in a position to allow this amendment as in order. It is out of order.

Sardar Patel: I beg to move:

(i) "That in sub-clause (1) of clause 12 for the words 'date of the detention order' the words 'date of his detention' be substituted."

(ii) "That in sub-clause (2) of clause 12, for the words 'date of the order' the words 'date of his detention' be substituted."

Mr. Speaker: The question is:

(i) "That in sub-clause (1) of clause 12 for the words 'date of the detention order' the words 'date of his detention' be substituted."

(ii) "That in sub-clause (2) of clause 12, for the words 'date of the order' the words 'date of his detention' be substituted."

The motion was adopted.

Pandit Thakur Das Bhargava: I beg to move:

"That in sub-clause (2) of clause 12, for the words 'a judicial officer not below the rank of a District Judge' the words 'a person who is or has been or is qualified to be appointed as Judge of a High Court' be substituted."

I am quite conscious of the fact that it was not necessary, for cases coming under clause 12, to appoint any reviewing authority or any advisory board, but since the hon. Mover of the Bill has in his wisdom seen fit to make a provision like the one contained in that clause which gives some safeguard to detenus under clause 12, I suggest that the appointment of a High Court Judge would inspire more confidence in the public. Though I have used the very words which are used with reference to qualifications for members of the Advisory Board, yet in practice for this purpose a retired or present Judge of the High Court may preferably be appointed. Any eminent public man who answers the qualification may also be appointed if necessary but in my humble submission it would be better if a retired or serving Judge of the High Court is appointed.

Dr. Deshmukh: I beg to move:

"That in sub-clause (2) of clause 12, for the words 'a judicial officer not below the rank of a District Judge' the words 'a person who is or has been a Judge of a High Court' be substituted."

I wish by this amendment to give effect to what my friend Pandit Bhargava himself has in view. The only difference is that he is prepared to leave it to goodwill of Governments and practice. I do not know if a learned friend like Pandit Bhargava has not seen the result of his own amendment because evidently his intention in moving his amendment was to give the power to an officer of a higher status than a District Judge, whereas actually if the wording that he has proposed is accepted it would be possible to appoint a person who is not even a District Judge. I may refer him to Article 217 of the Constitution where the qualifications of a person who is capable of being appointed a High Court Judge are mentioned. The qualifications are:

"A person shall not be qualified for appointment as a Judge of a High Court unless he is a citizen of India and—

(a) has for at least ten years held a judicial office in the territory of India; or".

That does not necessarily mean that he must be a District Judge. Then:

"(b) has for at least ten years been an advocate of a High Court in any State specified in the First Schedule or of two or more such Courts in succession."

That is to say, if he wants to keep the wording he has suggested, it will be possible for the Government to entrust this work to a person below the rank of a District Judge. So, I submit the wording that he has proposed is not satisfactory. On the other hand, the wording that I have suggested should meet the purpose. The intention, both his and mine, is that it should as far as possible be a seasoned and experienced judicial officer in whose impartiality the detenu and everybody will feel a sort of security. The amendment moved by my hon. friend Pandit Bhargava should be absolutely unacceptable, because it really diminishes the qualifications of the person who is to be appointed under this particular section. I hope the hon. Minister will agree with me that, in considering Pandit Bhargava's amendment seeking to improve upon the existing clause,

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we should not take away from the qualifications that have been already laid down I urge that my amendment may be adopted.

Shri Kamath: I beg to move:

"That in sub-clause (2) of clause 12, for the words 'a judicial officer not below the rank of a district judge', the words 'a person who is, or has been a judge of the Supreme Court or a judge of a High Court' be substituted."

I agree with my hon. friend Dr. Deshmukh that the amendment tabled by my hon. friend Pandit Bhargava does not meet the needs of the case. To my mind, the person should be one who is at the time, or has been in the past, a judge of a High Court or of the Supreme Court. As my hon. friend Dr. Deshmukh observed, there are many persons who are *qualified* to be judges of the High Court. That is not in this connexion adequate, in my humble opinion. A person who has actually been a High Court judge or who is at the time a High Court judge should be appointed. That is one of the points which my amendment seeks to meet.

Secondly, I want that a judge of the Supreme Court may also be consulted. It is true that a judge of the Supreme Court, in most cases, will be a person who has been a judge of a High Court, but if the House will recollect, we have, in the relevant Article in the Constitution, provided that eminent jurists also can be judges of the Supreme Court. That is to say, they may be directly recruited, as is done in the case of the permanent Court of International Justice at the Hague. The House accepted an amendment I moved in the Constituent Assembly to the effect that jurists of eminence may also be appointed to the Supreme Court. Therefore, it may sometimes happen that a person who has not been a judge of the High Court may be on the Supreme Court as a judge, and I see no reason why we should not avail ourselves of the services of such a distinguished personage. I therefore commend my amendment to the House.

Mr. Speaker: I shall place the amendments before the House. Amendments moved:

(i) "That in sub-clause (2) of clause 12, for the words 'a judicial officer not below the rank of a district judge', the words 'a person who is or has been or is qualified to be appointed as judge of a High Court' be substituted."

(ii) "That in sub-clause (2) of clause 12, for the words 'a judicial officer not below the rank of a district judge' the words 'a person who is or has been a judge of a High Court' be substituted."

(iii) "That in sub-clause (2) of clause 12, for the words 'a judicial officer not below the rank of a district judge' the wrods 'a person who is or has been a judge of the Supreme Court or a judge of a High Court' be substituted."

Sardar Patel: In order to cut short the debate, I wish to say that I propose to accept the first amendment, moved by Pandit Bhargava. It is more comprehensive, and it is taken, practically word for word, from the Constitution itself where the qualifications are provided for. Therefore, I do not want to accept the other restricted amendments.

Mr. Speaker: I presume the wording has been examined properly. I hope there is no difficulty about the wording adopted by Pandit Bhargava.

Sardar Patel. It is all right.

Shri Kamath: If that be so, the Advisory Board referred to by the Home Minister in the Article deals only with those cases.....

Mr. Speaker: I do not want any argument. I only want to know whether he wishes his amendment to be put to vote or not.

Shri Kamath: It may be put to vote.

Mr. Speaker: Very well. What about Dr. Deshmukh?

Dr. Deshmukh: I would like to withdraw my amendment.

The amendment was, by leave, withdrawn.

Mr. Speaker: So, I will put Mr. Kamath's amendment first.

The question is:

"That in sub-clause (2) of clause 12, for the words 'a judicial officer not below the rank of a district judge' the words 'a person who is or has been a judge of the Supreme Court or a judge of a High Court' be substituted."

The motion was negatived.

Mr. Speaker: Now Pandit Bhargava's amendment.

The question is:

"That in sub-clause (2) of clause 12, for the words 'a judicial officer not below the rank of a district judge', the words 'a person who is or has been or is qualified to be appointed as judge of a High Court' be substituted."

The motion was adopted.

Shri Kamath: There is another amendment by me to this clause.

Mr. Speaker: Yes, he may move it.

Shri Kamath: I beg to move:

"That part (b) of sub-clause (1) of clause 12 be omitted."

This part (b) of sub-clause (1) of clause 12 refers to matters pertaining to the security of a State or the maintenance of public order. The House will see that this clause refers to that class of cases where detention for a period longer than three months is contemplated. The House will also see further that matters pertaining to the maintenance of supply and services essential to the community have been taken out of the purview of this clause. The only matters that have been included, apart from the defence of India, relations with foreign powers or the security of India are the security of a State or the maintenance of public order which are among the subjects appearing in the concurrent list. I would, however, submit that so far as the security of a State or the maintenance of public order is concerned, it would be adequate for our purpose if we include them within that category of cases which will be referred to the Advisory Board before the expiry of three months. May I submit an instance in point? "Maintenance of public order" is a very comprehensive term and a very comprehensive provision. Persons who are intending to take out a procession in a city, maybe in defiance of an order under section 144 too, could be hauled up or brought within the purview of this part (b).

And it was a case like this to which the Bombay High Court referred the other day. The Home Minister was good enough to state that what I had stated in that connection was somewhat irrelevant. May I, in all humility, tell him that what I had in my mind was that, as the Bombay High Court observed, the Executive may in their zeal for maintenance of order, exceed their powers. That is what the Bombay High Court remarked and that is what I fear may happen with unwise officers who might take undue advantage of part (b) of this clause, to crush or suppress what are not entirely illegal activities. The other day there was another report from Bombay that the members of a particular party—I believe it was the Socialist Party who were about to take out a procession in Bombay as a protest against the Public Safety Act on the anvil of the Bombay Statute Book—were arrested and later let off. But with a measure like this

[Shri Kamath]

in their hands, who knows what may not happen. I for one, am in favour of detaining such persons who threaten to break public peace and order but for God's sake give them a chance to put their case before the Advisory Board and that will be provided for only in case these matters are taken out of the purview of clause 12 and included within the purview of clause 3 or 4 that we have already adopted. Otherwise I have grave fears that for very minor acts or threats to peace, the police may round up persons and detain them for a period longer than three months under this clause and I for one, am afraid that if this is taken undue advantage of—I pray to God that this will not happen—but if it does happen, if it is taken undue advantage of by officers who should be wiser than they are, then malicious critics may level the charge against us that we are promoting a Police State and not a Welfare State.

Mr. Speaker: Amendment moved:

"That part (b) of sub-clause (1) of clause 12 be omitted."

Sardar Patel: I oppose the amendment and I do not understand Mr. Kamath's reasoning when he says that clause (a) may be retained when it says 'Security of India' but to clause (b) where the 'Security of a State or part of India' is in danger, he objects. It is very inconsistent and anomalous and I do not agree with the amendment. I oppose it.

Mr. Speaker: Mr. Kamath's objection seems to be against the words 'for the maintenance of public order'. The amendment is much wider.

Shri Kamath: I object to the second part.

Sardar Patel: I oppose the amendment.

Mr. Speaker: The question is:

"That part (b) of sub-clause (1) of clause 12 be omitted."

The motion was negatived.

Mr. Speaker: The question is:

"That Clause 12, as amended, stand part of the Bill."

The motion was adopted.

Clause 12, as amended, was added to the Bill.

Shri Kamath: I beg to move.

"That sub-clause (2) of clause 13 be omitted."

That sub-clause refers to the revocation of an order of detention but goes on to say that the revocation of a detention order shall not bar the making of a fresh detention order under clause 3 against the same person.

Now, I am not quite sure whether most of the provisions in this Bill have been taken from the Defence of India Act or Rules made thereunder but even if they have been, the House will realize that that Act was passed only after proclamation of an emergency and the rules made thereunder were in accordance with an Act which was duly adopted after an emergency had been proclaimed by Government. But here we are enacting a legislation of an emergency character,—all but in name. It has been admitted by the Minister himself that it is an emergency measure and it will become void when the emergency ceases to operate but if that were so, I fail to see why a detention order, after it has been revoked, may be substituted by another order under clause 3 against the same person. If the Advisory Board recommends that the detention is uncalled

for, then the only course open to Government is to revoke the order and release the person. Clause 13 only refers to revocation of an order made by the Subordinate Officer or State Government *i.e.*, the superior authority revokes an order made by the subordinate authority. So there is no reason why the authority revoking the order should pass a new order detaining the same person because when that superior authority considers this matter of revocation of a detention order, he certainly takes all the circumstances and facts into consideration and it is only when that authority is satisfied that the subordinate authority has not acted correctly, that he decides that the order should be revoked. In that eventuality I fail to see why the authority revoking the order should pass a fresh order to detain the person. I would like clarification on this point.

Mr. Speaker: Amendment moved:

"That sub-clause (2) of clause 13 be omitted."

The object of the clause is obvious but it is not for me to say about the merits.

Sardar Patel: I oppose the amendment. The revocation of the order shall not bar the making of a fresh detention order, under clause 3, of the same person. I think he wants to delete that. I do not see why it should be done. He wants that order should have the force of an acquittal.

Mr. Speaker: The acquittal will be restricted of course to an offence under the same set of facts.

Sardar Patel: Here there is nothing mentioned about the same set of facts.

Mr. Speaker: But his objection seems to be based on that but he ignores that the same man may have committed other offences.

Shri Kazmi (Uttar Pradesh): Will it be possible under the provision, as it stands, to immediately order the detention of a man after a detention order is revoked and the man released? The question is whether some period will have to elapse between the revocation of the order and passing of the new order?

Sardar Patel: Why should it be so? He may have committed an offence which may not be known at that time but as soon as the order is revoked and once he is released a fresh report may come which may warrant his detention. It may not be possible to detain him on the same set of facts but that of course any authority will see. He is bound to get the advantage of that.

Shri Syamnandan Sahaya: There is one thing I would like cleared with regard to the revocation of the order by the State Government. I felt that the provision was not clear. I do not know why this provision was required because the State Governments are of the same party and it is possible for the Central Government to get the State Governments to do it.

I just wanted to draw your attention to that.

Sardar Patel: It is a safeguard to the detenu himself.

Mr. Speaker: And perhaps an indirect check on the State Government also.

The question is:

"That sub-clause (2) of clause 13 be omitted."

The motion was negatived.

Mr. Speaker: The question is:

"That clause 13 stand part of the Bill."

The motion was adopted.

Clause 13 was added to the Bill.

Shri Kamath: I beg to move:

"That in sub-clause (1) of clause 14, the words 'any statement is be made, or' be omitted."

[Shri Kamath]

This clause refers to the disclosure of grounds of detention, except for the purposes of a prosecution for an offence punishable under sub-clause (2) of clause 14. Those offences relate to disclosure or publication without previous authorisation of the Central Government or the State Government of any contents or matter purporting to be contents of any such communication or representation, etc. Now, if the House will scrutinise this clause 14, my hon. colleagues will see that clause has relevance to clause 7 of this Bill. Clause 7 deals with cases where the detenus' cases will be referred to the Advisory Board for detention for a period longer than three months and not the second category of cases where the detention may be for a period longer than three months without such reference. You, Sir, in the forenoon were pleased to observe that the proceedings of the Advisory Board as envisaged in this Bill do not come in the way of applications by detenus to High Courts for writs of *habeas corpus*. If that be the position, the detenus, in spite of the Advisory Board's authority or power in this matter, have got the right to apply to High Courts for the issue of writs of *habeas corpus*. Then, this clause 14 assumes some importance This clause goes on to say :

"No court shall, except for the purposes of a prosecution for an offence punishable under sub-section (2), allow any statement to be made....."

I suppose the word 'court' includes the High Court as well. All the courts are included within the purview of this clause. Therefore, if the detenu applies to a High Court for the issue of a writ of *habeas corpus*, does this clause mean that that court shall not allow a statement to be made or any evidence to be given before it of the substance of any communication made under clause 7 of the grounds of detention or any representation made by that detenu against the order? Because, in that case it will be difficult for a High Court, which has before it an application of the detenu for a writ of *habeas corpus*, to call for the statement or the substance of any communication made under clause 7 as regards the grounds of detention, as also the representation that the detenu might have made against the order of detention. This is grossly—if my reading is correct—I am speaking subject to correction—I hope I am wrong in this interpretation of this section—but if my interpretation is correct, it is wholly unfair that the High Court should not have before it the statement or substance of any communication or representation, before it comes to a decision in the matter. The section as it has been drafted and placed before the House leaves room for ambiguity on this point, whether the High Court can take such cognisance on this matter.

Shri T. T. Krishnamachari: If I may interrupt, Sir, Article 226 covers the position that the hon. Member envisages: nothing that we do here shall take away the right under Article 226.

Sardar Patel: But, he has a suspicion.

Shri Kamath: I have my doubts. When we are enacting a special measure in accordance with the provisions of the Constitution adopted a month ago, we ought not to leave any loophole for anybody to take undue advantage of that later on. Therefore, I want this to be made clear that so far as statements to be made before a court and the substance of any communication made under clause 7 of the grounds of detention or of any representation made by the detenu against that order are concerned, there should be no bar for a detenu to submit that before any court. Because, otherwise, the High Court will be debarred from or will not be able to have all that material before it, before it decides the application for a writ of *habeas corpus*.

Mr. Speaker: I am placing all the three amendments before the House.

Shri Kamath: I have moved only one.

Mr. Speaker: But, the argument is the same for all. He may have his say.

Shri Kamath: I beg to move:

"That in sub-clause (1) of clause 14, the words 'the substance of, any such communication or representation made, or' be omitted."

This relates to that portion of sub-clause (1) of clause 14 which deals with proceedings before a court which has taken cognisance of a case relating to a detenu. As I have just stated, the High Court or any other competent court ought to be able to require any public officer to produce before it the substance of any communication or representation. I am agreeable to this,—that the proceedings before the Advisory Board may not be submitted before the High Court or any other court.

An Hon. Member: Why?

Shri Kamath: The proceedings before the Advisory Board may be confidential and may not be produced before the High Court. But, in so far as the statement of the detenu is concerned, or his representation is concerned, or the order or the grounds of detention communicated by the Government are concerned, the High Court must be fully competent to go into these matters. All I can agree to is that the High Court may not have the benefit of the proceedings of the Advisory Board when it has to come to a decision on this matter.

The third amendment is this. I beg to move:

"That in sub-clause (2) of clause 14, the words 'communication or' be omitted."

This refers to the disclosure of the contents of a communication or representation as is referred to in sub-clause (1). This sub-clause penalises persons who without authority disclose or publish contents or matter purporting to be the contents of any such communication or representation as is referred to in sub-clause (1).

I submit that so far as the grounds for detention are concerned, there should be no bar to their disclosure. I certainly agree that the representation of the detenu should not be disclosed without due authority, because it very often happens that such representations are propagandist in nature in favour of some ideology or other. I remember however that when we were in detention in 1942 and thereafter during the dark days when the British Government's very existence was at stake, newspapers from time to time published the grounds on which our leaders and some of us had been detained and the British Government of that day, though it was struggling for its very existence, did not take any action against the newspapers which published the grounds of detention. Of course the representations of the detenus were not allowed to be published. But I see no reason why there should be any objection to the disclosure of the grounds of detention such as, acting prejudicially to the Defence or security of India or to foreign relations. I therefore move these three amendments and commend them to the House.

Mr. Speaker: Amendments moved:

(i) "That in sub-clause (1) of clause 14, the words 'any statement to be made, or' be omitted."

(ii) "That in sub-clause (1) of clause 14, the words 'the substance of, any such communication or representation made, or' be omitted."

(iii) "That in sub-clause (2) of clause 14, the words 'communication or' be omitted."

Sardar Patel: I oppose the amendments, but as doubts on legal issue have been raised by Mr. Kamath, I would request the Attorney-General to put forward the legal point of view.

The Attorney-General: May I, Sir, make an explanation to satisfy my hon. friend as to the real position? He seems to be under the impression that by reason of the proviso to clause 14 the person detained will not be entitled to state before the High Court, if ever he is to be before it, the grounds on which he is detained. Now, the order against him will state that he is detained with a view to prevent him from acting prejudicially either to the defence of India or to public order or whatever the ground may be. That order will be served upon him and that order will be produced before the High Court. Then will be reached the further stages in reference to which provisions are contained in Clause 14. Clause 14 relates to the giving of evidence. My hon. friend's apprehension that the detenu will not be able to tell the High Court on what ground he is detained is not well founded. The High Court will therefore be in a position to deal with the *habeas corpus* application. My hon. friend will remember that what the High Court has to be satisfied about; it has got to see that the detention is in accordance with procedure established by law. That is the provision in Article 21 of the Constitution. That is how the matter stands.

Shri Kamath: The Attorney-General has referred to only the grounds for detention and not to the other points raised by me. I wanted to know whether the detenu will be able to make a statement or furnish evidence about his representation against the detention order.

The Attorney-General: He will not be able to give evidence of or have produced the confidential documents. But he will be able to tell the court why he has been detained, the steps taken in respect of the detention and put before it any other material which he may wish to. There the matter will rest, for it has to be remembered that the court will not be concerned with the merits of the detention. The court will have to examine the *habeas corpus* application and see whether he is detained according to procedure provided by law. That is all that is necessary under the Constitution.

Shri Kamath: Will he have the right to make a statement?

Mr. Speaker: He will be entitled to go into details.

Shri Kamath: Once the High Court takes cognisance of the *habeas corpus* application, will the detenu have the right to state merely the grounds of detention or he can make a further statement on the lines of the representation he has made already?

Mr. Speaker: The High Court will not be entitled to go into the merits of the detention. All that it can do is to see whether the proper procedure laid down by law has been followed or not. Is that the correct position?

The Attorney-General: Yes, Sir.

Mr. Speaker: Then I will put the amendments to the House.

Shri Syamnandan Sahaya: Will not the High Court have the right to call for the records?

The Attorney-General: If the law permits, the High Court may.

Mr. Speaker: I am putting the amendments to the House.

The question is:

"That in sub-clause (1) of clause 14, the words 'any statement to be made, or' be omitted."

The motion was negatived.

Mr. Speaker: The question is:

"That in sub-clause (1) of clause 14, the words 'the substance of, any such communication or representation made, or' be omitted."

The motion was negatived.

Mr. Speaker: The question is:

"That in sub-clause (2) of clause 14, the words 'communication or' be omitted."

The motion was negatived.

Mr. Speaker: The question is:

"That clause 14 stand part of the Bill."

The motion was adopted.

Clause 14 *was added to the Bill.*

Clause 15 *was added to the Bill.*

Sardar Patel: I beg to move:

"That after clause 15, the following new clause be added:

'16. *Repeal.*—The Preventive Detention (Extension of Duration) Order, 1950, is hereby repealed.'."

Mr. Speaker: The question is:

"That after clause 15, the following new clause be added:

'16. *Repeal.*—The Preventive Detention (Extension of Duration) Order, 1950, is hereby repealed.'."

The motion was adopted.

New Clause 16 *was added to the Bill.*

Clause 1 *was added to the Bill.*

The Title and the Enacting Formula were added to the Bill.

Sardar Patel: I beg to move:

"That the Bill, as amended, be passed."

I am grateful to the House for the practically unanimous support given to this Bill.

Mr. Speaker: Motion moved:

"That the Bill, as amended, be passed."

I might make it clear to hon. Members who wish to speak on the Bill again that there has been ample discussion during the consideration stage. During the clause by clause stage also we have discussed the provisions of the Bill very considerably. Now the scope of the third reading is restricted to the amendments which the House made during the course of the clause by clause reading. Hon. Members need not, at this stage, go into the general question of supporting or opposing the Bill. If they want to make short statements, it is another matter.

Hon Members: Nobody wants to speak.

Mr. Speaker: The question is:

"That the Bill, as amended, be passed."

The motion was adopted.

The House then adjourned till a Quarter to Eleven of the Clock on Monday, the 27th February, 1950.